

**THE
BENGAL TENANCY ACT.**

RAMPINI'S BENGAL TENANCY ACT

BEING
ACT VIII of 1885

AS MODIFIED UP TO THE 31ST MAY 1907

WITH
AN INTRODUCTION, CONTAINING A HISTORY OF THE ACT AND AN ANALYSIS
OF THE WHOLE ACT, NOTES, JUDICIAL RULINGS, THE RULES MADE
UNDER THE ACT BY THE BENGAL GOVERNMENT, THE HIGH COURT,
AND THE REGISTRATION DEPARTMENT, THE FORMS PRESCRIBED
BY THE BOARD OF REVENUE FOR USE IN THE PREPA-
RATION OF RECORDS OF RIGHTS AND AN APPENDIX
SHOWING THE PARTS OF THE ACT APPLICABLE
TO THE CHOTA NAGPUR DIVISION

Revised and Brought up to date

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PREFACE TO THE FOURTH EDITION.

Mr. Justice Rampini (now Sir Robert Fulton) when retiring from the Bench requested me to prepare the present edition of his famous work. I have in accordance with his directions, noted all recent rulings up to September 1909, in their proper places. I have also incorporated in this volume the provisions of the Eastern Bengal and Assam Tenancy Amendment Act I of 1908 with the notes previously printed in my edition of that Act which appeared as a Supplement to the main work. Whilst interfering as little as possible, with the notes contained in the previous edition, I have for convenience of reference, broken up some of the long paragraphs under appropriate headings and added some new paragraphs here and there. The heavy and light brackets used in the last edition indicating respectively the changes made by Act I of 1907 and Act III of 1898 B. C., have been retained in this edition as cases governed by the Act in the various stages of its life are still coming up for decision. The Government rules and the rules of the Registration Department under the Act have been corrected up to date and the references to the Rules of the Revenue Board have been given from the New Manuals. A synopsis of the general provisions of the Act has been added to the Introduction by Mr. J. H. Kerr—the Joint Editor and will it is hoped facilitate the study of the Act. The index has been thoroughly revised and amplified by Babu Jogendra Chandra Dutta, Vakil, High Court, who has also carefully passed the book through the press. My thanks are due to him and also to the enterprising publishers who have done everything to give the book a creditable get up.

CALCUTTA :	}	DIGAMBAR CHATTERJEE.
<i>The 5th December, 1909.</i>		

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INTRODUCTION.

CHAPTER I.

HISTORY OF THE BENGAL TENANCY ACT.

THE Bengal Tenancy Act, though not professing to be an exhaustive code of the law of landlord and tenant, is nevertheless a complete and self-contained enactment, so far as the most important agrarian relations are concerned. Since it was passed in 1885, it has undergone various important amendments. But the principles on which the Act is founded have remained unaltered. The object of the amendments made has throughout been to give fuller effect to those principles. It is unfortunate, though perhaps inevitable, that the discussions of recent years have dealt mainly with the working of the Act in details, and this has tended to obscure its main principles. In these circumstances, it has been thought that some account of the history of the Act and a brief explanation of its principles might be useful to the great body of officials and non-officials, who are concerned in its working.

Perhaps the best account of the aims and objects of the framers of the Bengal Tenancy Act is to be found in the speech of the Viceroy, when the Bill was first introduced in Council in 1883. Lord Ripon said,—“We have endeavoured to make a settlement, which, while it will not deprive the landlord of any of their accumulated advantages, will restore to the raiyats something of the position which they occupied at the time of the Permanent Settlement, and which we believe to be urgently needed, in the words of that settlement, for the protection and welfare of the taluqdars, raiyats and other

The basis of the Act is the Permanent Settlement.

cultivators of the soil, whose interests we then undertook to guard, and have to our shame too long neglected." (1). Again, his successor Lord Dufferin in 1885, in putting the motion that the Bill should be passed, said he believed that "it is a translation and reproduction in the language of the present day of the spirit and essence of Lord Cornwallis's settlement, that it is in harmony with his intentions, that it carries out his ideas, that it is calculated to ensure the results he aimed at, and that it is conceived in the same beneficent and generous spirit, which actuated the original framers of the Regulations of 1793. Lord Cornwallis desired to relieve the zamindars from the worry and ruin occasioned by the capricious and frequent enhancements exacted from them by former Governments, and it is evident from his language that he expected they would show the same consideration to their raiyats." (2) It is in fact one of the most remarkable features of the discussions on the Bill which subsequently became the Bengal Tenancy Act, that the Permanent Settlement Regulations were treated as the final test by which all proposals were to be tried. And it is therefore clear that for the comprehension of the principles of the Tenancy Act, some knowledge of the Permanent Settlement is necessary.

When the East India Company in 1765 obtained the Diwani of Bengal, Behar and Orissa, the revenue system in force was that founded by Akbar. The assessment was that originally made under the guidance of Todar Mall, Akbar's Finance Minister, in 1582, and subsequently modified by revisions carried out between 1685 and 1750. In theory, the assessment was based on a measurement of the cultivated area, the fixing of the Government demand at one-third of the gross produce, (except for certain crops and classes of soil, for which special rates and allowances were fixed), and the commutation of the Government share of the produce to

(1) Selections from papers relating to the Bengal Tenancy Act, 1885, pages 140-141.

(2) Selections, page 584.

cash at rates based on average prices for a period of years.⁽¹⁾ But in practice, especially in Bengal and other outlying parts of the Moghal Empire, large areas were as a rule let out in farm to *amils* or Revenue Collectors, who were apparently left to make their own arrangements regarding assessment and collections. This, it may be remarked in passing, accounts for the absence in Bengal of that village revenue agency, which is found in most of the other provinces of India, and the lack of which has for the last century and a half so seriously hampered the efforts of Government to regulate agrarian relations in Bengal. The want of such an agency and the absence of all trustworthy information as to the agricultural capabilities of the country was early felt by the East India Company. In 1769, or four years after the acquisition of the Diwani, supervisors were appointed to superintend the collection of the revenue, and were directed to obtain a history of the tracts under their charge with regard to their "condition, revenue, *abwab*, capabilities of the soil &c." On the basis of their enquiries, a quinquennial settlement was concluded for a large part of the Province in 1772, and this was continued with certain variations till 1790.

In 1786, Lord Cornwallis arrived in India with instructions from Parliament and the Court of Directors to establish "permanent rules for the settlement and collection of revenue." His first step was to issue a set of interrogatories to "the most experienced of the Civil servants," who were required to report,—

- (1) the amount of assessment proposed for each estate,
- (2) the persons with whom settlement should be made,
- (3) the measures necessary to prevent the raiyats being oppressed and to secure the landlords in the realisation of their just demands.

1) *Ain-i-Akbari*. Muzaffarpur Settlement Report, pages 29-32.

On the basis of the information compiled under the first two heads, a decennial settlement was made in 1790. This was made permanent in 1793. It is unnecessary to enter here into the controversy as to whether the information available in 1793 was sufficient to justify the making of a permanent settlement, or whether the settlement was made with the right persons. It is sufficient for present purposes to note that the enquiries made preliminary to the Permanent Settlement regarding the measures necessary to prevent the raiyats being oppressed and to secure the landlords in the realisation of their just demands, did not supply enough materials for positive legislation. But by section 7 of the Permanent Settlement Regulation I of 1793, the Zamindars were required "to conduct themselves with good faith and moderation towards the dependent talukdars and raiyats." In section 8 of the same Regulation, it was declared as follows;—"It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talukdars and raiyats and other cultivators of the soil." And finally by section 67 of Regulation VIII of 1793, it was enacted that proprietors should be bound by the restrictions in their *kabuliyats*, the ninth clause of which was that, "implicit obedience be shown to all regulations which have been or may be prescribed by Government concerning the rents of the raiyats and the collections from under-tenants and agents of every description as well as from all other persons whatever." It is on these declarations made in connection with the Permanent Settlement of the Land Revenue, that all subsequent agrarian legislation in Bengal has been based. And it may further be remarked that all the important legislative measures, from Act X of 1859 down to the last Amendment Act of 1907, have dealt

Provisions of
the Permanent
Settlement
regarding land-
lords and ten-
ants.

with the two objects which were mentioned in Lord Cornwallis's instructions of 1786, *viz*, the protection of the raiyats and the security of the landlords in the realisation of their just demands.

At the time of the Permanent Settlement, the means by which it was hoped to effect this two-fold object was the exchange between the zamindars and their tenants of *pattas* and *kabuliyats*, showing the rents legally payable and excluding *abwab* and other impositions. The right of the raiyats to receive *pattas* was declared by section 59 of Regulation VIII of 1793. By sections 54 and 55 of the same Regulation, it was directed that all existing *abwab* should be consolidated with the *asal* rent, and the imposition of any new *abwab* was prohibited. By section 62, the zamindars were bound to appoint patwaris whose duties were to maintain the rent accounts of the raiyats. But the hope that, by this means, a continuous record of the rights and obligations of landlord and tenant would be maintained was doomed to early disappointment. In 1812, the Collector of Tirhut reported that there was scarcely one instance in Bihar of a *patta* being taken or a *kabuliyat* executed. He added however that this was "more the fault of the raiyat than of the *malik*, the raiyat being averse to bind himself to pay any considerable fixed rent."⁽¹⁾ Complaints of the realisation of *abwab* in addition to the rent were numerous.

Meanwhile Government had not neglected the other obligation which it had undertaken, of securing the recovery of rent. landlords in the realisation of their dues. Regulation VII of 1799, (the notorious *Haftam*), gave the landlords practically unrestricted power to distrain the crops, cattle and other personal property of the raiyats, and in certain cases to arrest their persons for arrears of rent, without reference to any Court. Regulation V of 1812, (the *Panjam*),

(1) Darbhanga Settlement Report, para 70.

abolished the power of arrest, but the right of distraint remained. These measures were justified at the time by the alleged necessity of securing the collection of the Land Revenue. It was argued that, as Government had the right to sell up the estates of the zamindars for failure to pay the land revenue, it was necessary to give the zamindars corresponding powers as regards their raiyats, in the event of the failure of the latter to pay their rents. On this point, Sir William Hunter in his Introduction to the Bengal MSS Records writes as follows :—

“The laws of 1799 and 1812 are so painfully associated in subsequent history with harshness to the cultivators, that it is necessary to emphasise the forgotten fact that they were at the time considered indispensable for the preservation of the landholders. I therefore quote a remarkable statement by a Bengal administrator, whose authority on such questions is beyond dispute. ‘It may not be generally known,’ wrote the late Mr. Buckland, ‘that the Regulation of 1799 was enacted in order to save the perpetual settlement, the existence of which was then imperilled by the excessive independence which the raiyats (cultivators) enjoyed. For although it is now the custom to say that the rights of the raiyats were not properly protected in the perpetual settlement, it turned out at the time that they could take such good care of their rights that the zamindars could not collect their rents from them until the Government came to the rescue of the zamindar, and made the raiyats liable to arrest for default of payment of rent.’”

It may be noted, however, that distraint was unknown in India until it was introduced in connection with the Permanent Settlement Legislation. It was described by the Rent Law Commission of 1880 as a mere “offset of English law”⁽¹⁾.

But it soon came to be realised that the raiyats and their rents could not be treated as on the same footing as the

(1) Rent] Law Commissioners' Report, para 4.

zamindars and their revenues. Government had fixed the revenue demand in perpetuity, and the accounts of the payments of the revenue were accurately kept in the Collectors' offices. Neither of these safeguards existed in the case of the rents of the raiyats. The refusal of landlords and raiyats to exchange *pattas* and *kabuliyats* frustrated the hope that these would serve to fix the rental demand. Nor did the appointment of patwaris secure the desired result of maintaining accurate accounts of the payments of rent made by the raiyats. Where patwaris were appointed, they were simply the servants of the zamindar and no reliance was placed on their accounts and papers.

The next step taken was an attempt to create a village agency, which should be independent of both zamindar and raiyat and which should maintain records showing the rights and obligations of landlords and tenants. By regulation II of 1815, Kanungos were appointed for each pargana, their duties being to supervise the work of the patwaris and to "authenticate" the execution of *pattas* and *kabuliyats*. By Regulation XII of 1817, the patwari was made a Government servant. His appointment and dismissal vested in the Collector, though he continued to be paid by the zamindar. But the Kanungo proved useless. It was reported that his supervision of the patwaris was ineffectual and his power to authenticate *pattas* and *kabuliyats* useless, as no such documents were ever presented for authentication.⁽¹⁾ The Kanungo was accordingly abolished in 1827, after an existence of little more than ten years. Nor was the rehabilitation of the patwari attended with much greater success. It was reported that the control exercised by the Collectors over his appointment and dismissal did not tend to make him independent of the zamindar from whom he received his wages.⁽²⁾ Over the greater part of the Province, therefore, the appointment of patwaris gradually ceased, and the Regulation of 1817 became a dead letter,

(1) Darbhanga Settlement Report, para 72,

(2) Darbhanga Settlement Report, para 73

though in some parts of Bihar the statutory patwari is found at the present day.

The failure of all the attempts made to control agrarian Record of relations led the Court of Directors in 1824 rights proposed. to sanction a proposal to make a survey and record-of-rights of the permanently settled districts of Bengal, as being the only means of defining and maintaining the rights of the raiyats.⁽¹⁾ More than sixty years, however, were to elapse before this vast undertaking was begun. But for temporarily settled areas, Regulation VII of 1822 provided that all future settlements of the land revenue should be preceded by a record of "the rights and obligations of various classes and persons possessing an interest in the land or in the rent or produce thereof." And this course was followed in the resumption to revenue of lands held revenue free* on invalid titles. These proceedings were carried out mainly between 1830 and 1850, and in many districts covered considerable areas. The record prepared showed the following particulars :—

(1) Specification of boundaries of the area under settlement with full details about *minhai* lands not liable to assessment.

(2) Details regarding extent of cultivation, classification of lands, outturn of crops, and gross produce.

(3) Rate of rent for each class of land and the gross produce for it, with specification of *abwab* realized along with rents.

(4) Information regarding the lands held under produce rents, (*batai* or *bhaoli*), their extent and nature of tenure.

(5) Determination of the status of the tenants, of their privileges, and liabilities.

(6) Information regarding village officials.⁽²⁾

(1) Sir Antony Mac Donnell's minute, dated 20-9-1803, para 21. Calcutta Gazette, supplement of Oct. 25, 1803, page 1989.

(2) Muzaffarpur Settlement Report para 239.

The work done in connection with these resumption proceedings between 1830 and 1850 supplied Government for the first time with a really detailed account of the rights and obligations of different classes of landlords and tenants. The first fruits were seen in Act XII of 1841, which protected from ejectment on the sale of an estate for arrears of revenue, all *khudkasht* and *kadimi* raiyats having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the regulations in force. This was an important recognition of the need for protection of the occupancy rights of the raiyats, and of the classes who were entitled to enjoy such rights. But no legal definitions of occupancy rights and occupancy raiyats were forthcoming until the passing of Act X of 1859, which has been described as the first effective step taken by the Legislature to discharge the duties undertaken at the Permanent Settlement.⁽¹⁾

Act X of 1859 is entitled an Act to amend the law relating to the recovery of rent, and this was Act X of 1859. originally its main object. It introduced for the first time definite provisions regarding suits for arrears of rent and the execution of decrees for arrears of rent. The Collector's Court was declared to be the tribunal for such cases. But during the passage of the Bill through Council, important additions were made, with the result that the Act as passed contained a more or less exact definition of the different classes of raiyats and of the rights which it was thought expedient to confer on them. Raiyats were divided into three classes :

(1) Those who had held at rates of rent which had not been changed since the Permanent Settlement, were declared entitled to hold for ever at these rates. If the rate of rent had not been changed for twenty years, it was to be presumed that it had not been changed since the Permanent Settlement.

(2) Every raiyat who had cultivated or held land for 12 years was declared to have a right of occupancy in the land, so long as he paid the rent payable on account of the same. But this rule did not apply to proprietor's private land let out on lease for a term of years or year by year, and the accrual of occupancy rights in any land could also be barred by a written contract.

(3) Other raiyats, not having rights of occupancy, were declared entitled to pattas only at such rates as might be agreed upon between them and their landlords.

The Act contained further important provisions for the protection of occupancy raiyats. Their rents could only be enhanced on certain specified grounds; they could only be ejected by a judicial decree or order, and their crops could only be distrained for the arrears of one year. But the most debated point, on which controversy was to rage for over a quarter of a century, was whether the Act conferred rights of occupancy on the right class. One school of opinion argued that the immemorial custom of the country gave rights of occupancy to all resident raiyats of the village, who had in the earlier laws and regulations been vaguely styled *khudkasht* or *kadimi*. It was urged that to make the accrual of occupancy rights dependent on twelve years cultivation of a particular piece of land, and to allow such accrual to be barred by a written contract, was a serious infringement of the customary rights of the resident raiyats of the country. The representatives of the opposite school argued that the effect of the 12 years' rule was to confer rights of occupancy on a large class, who were previously mere tenants at will. Eventually the controversy was set at rest for the time being by a decision of the High Court, that Act X of 1859 was not an exhaustive statement of the rights of tenants, and that claims to occupancy rights founded on their accrual by custom might be maintained.⁽¹⁾

Enhancement
of rents.

Meanwhile another controversy had broken out regarding the working of the enhancement sections of the Act. In 1862, Sir Barnes Peacock, the Chief Justice of Bengal, laid down the doctrine that rent in Bengal was "economic rent" as defined by Malthus, viz, "that portion of the value of the whole produce, which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being." Sir Barnes Peacock further denied that an occupancy raiyat had any right to have his rent fixed at a lower rate than that which a tenant, not having a right of occupancy, would give for the land.

This decision was strongly assailed as subversive of the customary rights of the raiyats of Bengal and contrary to all the undertakings given by the authors of the Permanent Settlement. In 1865, the matter came before a Full Bench of the High Court in what is known as the "Great Rent Case". (1) The result was that the Full Bench by a majority repudiated the doctrine of "economic rent" and the theory that rent ought to be fixed by competition, as inapplicable to the customs and conditions of the country. They held that a raiyat was bound to pay a fair and equitable rent, which should be "that portion of the gross produce, calculated in money, to which the zamindar is entitled under the custom of the country"; and that in order to ascertain this share, regard should be had to pargana rates, rates paid for similar lands in adjacent places, and rates fixed by the law and usage of the country. (2) Since this decision, the claim that rents in Bengal are pure economic rents to be fixed by competition has never been accepted in responsible quarters.

(1) *Thakurani Das v. Bisheshar Mukherji*, B. L. R., F. B. Vol., 202.

(2) *Selections*, page 44.

Act VIII of 1869 transferred the trial of suits regarding rent from Collectors to the Civil Courts, but <sup>Necessity for further legisla-
tion.</sup> was expressly confined to an amendment of the existing law in respect of procedure and jurisdiction, although the discussions on the Bill brought out numerous admissions as to the necessity which existed for revising the substantive law of 1859 in regard to the accrual of occupancy rights and the enhancement of rents (¹). In 1868 Lord Lawrence, as Governor-General, recorded a minute relating to the depressed state of the peasantry in Bihar, in which he said that he believed that "it would be necessary for the Government sooner or later to interfere and pass a law which should thoroughly protect the raiyat and make him what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it." (²) In Eastern Bengal, widespread agrarian discontent culminated in 1873 in serious disturbances in the Pabna district, where the cultivators banded themselves together to resist short measurements, illegal cesses and the forced delivery of agreements to pay enhanced rents. In consequence of these disturbances, the Agrarian Disputes Act, passed in 1876, provided for the transfer in special localities and for a limited period, of the entire jurisdiction in respect of enhancement and arrears of rent from the Civil Courts to the Revenue authorities. This was followed in 1877 by the introduction of a Bill to provide for the more speedy realisation of undisputed arrears of rent. But the Select Committee on this Bill recommended that it should be withdrawn, and that the whole subject of the revision of the Rent Law of the Province should be once for all fairly faced. Another Committee which had been appointed, after the famine of 1874-75, to consider the condition of the agricultural classes in Bihar, made a similar recommendation. Accordingly in 1879, a strong Rent Commission was appoint-

(1) Selections, page 44.

(2) Selections, page 45.

ed with instructions to prepare a digest of the existing statute and case law relating to landlord and tenant and to draw up a consolidating Bill. (1)

This Bill formed the basis of the discussions which resulted in the passing of Act VIII of 1885. It is unnecessary to describe the details of these discussions. The provisions of Act VIII of 1885, as amended up to date, will be analysed in the second chapter of this introduction. It is sufficient to note here that the Act had as its main objects, (1) to give reasonable security to the tenant in the occupation of his land, and (2), to give reasonable facilities to the landlord for the settlement and recovery of his rent. The new Act completely recast the provisions of the former Act of 1859 regarding the accrual of occupancy rights and the trial of suits for the enhancement and recovery of arrears of rent; it defined with greater particularity the different classes of tenants and their various rights and obligations; it contained provisions limiting the right of contract between landlord and tenant, and prohibiting tenants in certain cases from contracting themselves out of the rights conferred upon them by the law; and finally it provided for the survey and preparation of a record-of-rights in land, a measure which, as has been shown, had been decided on sixty years previously, but had never actually been taken in hand, otherwise than in connection with a settlement of the Land Revenue.

The preparation of the record-of-rights has been the main feature of agrarian administration during the quarter of a century which has elapsed since the Bengal Tenancy Act became law. During that period, records-of-rights have been prepared for the whole of Orissa, for the Tirhut and Bhagalpur divisions, and for parts of the Patna division, and it is understood that it is proposed to continue the operations until the whole of that part of the Province, in which the Bengal Tenancy Act is in force, has

(1) Selections, page 46.

been completely surveyed. It is on the experience of agrarian relations which these exhaustive operations have supplied, that the majority of the more important amendments made in the Act since 1885 have been based.

The first amendment of the Act was made by Act VIII of 1886. This merely made some slight alterations in the sections dealing with the transfer of permanent tenures. It was followed by Act I of 1894, which made some changes in the procedure for the preparation of a record-of-rights under Chapter X. But the first important amendment of the Act was that made by Act III, B. C., of 1898, which completely recast Chapter X, dividing it into two separate portions, the first dealing with the preparation of a record-of-rights with a view to a settlement of the land revenue, and providing for a settlement of fair and equitable rents for tenants of every class as an integral part of the operations; and the second dealing with the preparation of a record-of-rights in areas where the land revenue is not being settled, the Settlement Officer being given power to settle fair and equitable rents only where application is made for such settlement by the landlord or tenant, and in other cases being confined to a record of the rent payable at the time the record-of-rights is being prepared. Act III, B. C., of 1898 also made some important alterations in the provisions relating to enhancement and reduction of rent, the object, as stated in the statement of Objects and Reasons, being "to make the provisions of the law workable and to give effect to the intention of its authors, regarding certain points on which, owing to want of sufficient clearness in the wording of the law or to the interpretations put on it by the Civil Courts, it has been found in practice to be inoperative."

Act I, B. C., of 1903 mainly dealt with the provisions relating to the transfer of permanent tenures. It was followed by Act I, B. C., of 1907, which is probably the most important agrarian measure, which

has been passed since 1885. For, though the Amendment Act of 1898 introduced considerable changes, it dealt with only one aspect of the case, the preparation of a record-of-rights and the settlement of fair and equitable rents; while there are few important provisions of the Tenancy Act which are not affected by the Act of 1907. Its objects, as given in the Statement of Objects and Reasons, were,—

(1) While, on the one hand, giving landlords greater facilities for the collection of their rents yet, on the other, to discourage their evading the provisions of the Bengal Tenancy Act, 1885, with regard to the enhancement of rent by entering into unfair, inequitable and collusive compromises with their tenants;

(2) to give greater authority to the record-of-rights when such record has been duly prepared and published;

(3) to give power to Government to distinguish between good and bad landlords, and to take steps in the case of the latter for the reduction of rents, when they appear to have been so unduly enhanced as to be oppressive to the cultivators of the soil, and

(4) to revise the Bengal Tenancy Act, 1885, to the extent of removing such defects in it as the working of the Act during the past twenty years has brought to light, and such ambiguities and anomalies as have given rise to conflict of opinion and judicial decision.

A considerable part of the provisions of the Amendment Act of 1907 was due to the recognition of the fact that the preparation of the record of rights had considerably modified agrarian conditions. In the first place, experience had shown that the mere preparation of the record-of-rights was not in itself sufficient to prevent evasions of the law. The great majority of rent suits are decided *ex-parte*. In such cases, it was found that the record-of-rights was not referred to by the Courts, because it was not produced by either of the parties. The

Weight to be attached to the record-of-rights.

Amendment Act therefore provides for the production of the entry regarding rent in the record-of-rights in all rent suits. Again, the former law, regarding the force to be attached to the entries in the record-of-rights, was somewhat vague and indefinite. The Amendment Act provides that every entry in a record-of-rights shall be presumed to be correct until it is proved by evidence to be incorrect, and requires a Court passing a decree at variance with entries in the record-of-rights, to record its reasons for so doing.

But while the Act thus gave greater definiteness and force to the record-of-rights in matters relating to land, it has also recognised that the preparation of a record-of-rights may in certain circumstances justify a more summary procedure for the recovery of rents, and it accordingly provides for the use, under certain restrictions, of such a procedure in areas in which a record-of-rights has been prepared and is maintained. Any landlord in such an area may apply to the Local Government for the application of the procedure, prescribed by the Public Demands Recovery Act I, B. C., of 1895, to the recovery of the arrears of rent due to him. If the application is allowed, and as to this the Local Government has absolute discretion, the landlord may make a requisition to a Certificate Officer specially appointed by the Local Government, for the recovery of arrears of rent due from any tenant. The Certificate Officer may then issue a certificate, which will have the force and effect of a decree of a Civil Court. The tenant, against whom the certificate is issued, may file an objection, and that objection will be heard and considered by the Certificate Officer. The Certificate Officer's decision is subject to appeal to the Collector of the district and to revision by the Commissioner and the Board of Revenue. A suit may also be instituted in the Civil Court on certain grounds to have the certificate set aside. Subject to the orders which may be passed on objection or on reference to the Civil Court, the certificate is final and may

be executed in the manner provided in Chapter XIV of the Act for the execution of decrees for arrears of rent. The main differences between the certificate procedure and the ordinary procedure for the recovery of arrears of rent are that, under the certificate procedure, the landlord obtains his decree at once instead of after the hearing, and the execution of the decree is carried out by a Revenue Officer, instead of by the Civil Court.

Another important amendment made by Act I, B. C., of 1907 is the recognition, under certain conditions, of a suit for arrears of rent, brought by one of several co-sharer landlords, as a rent suit, resulting in a decree having the force of a rent decree. The previous law, under which a decree obtained by a single co-sharer was a mere money decree, was harassing not only to the landlords, but also to the tenants, by exposing them to a number of successive suits brought by different landlords for their share of the arrears.

The Amendment Act also deals with the question of compromises and agreements between landlord and tenant filed before Revenue and Civil Courts. The principle adopted is that no Court shall give effect to an agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under the Act.

The other provisions of the Amendment Act of 1907 are discussed under the proper sections in this book, and are described in the analysis of the Act as a whole, which forms the subject of the following Chapter.

The operation of the Amendment Act of 1907 however is confined to what may be called Bengal Proper and its provisions had to be re-enacted as Act I of 1908 of the Eastern Bengal and Assam Council, with such alterations as were considered "suitable to local conditions."

The following are the more important changes made in this Act :—

1. The addition of a proviso to the definition of “village” in section 3 clause 10.

2. The alteration made in section 10 (*b*) regarding the effect of the purchase of an occupancy holding by a co-proprietor or joint tenure-holder (Sec. 22).

3. The omission of (Sec. 18) the provision by which the law regarding the evidence required to establish a landlord's recognition of the division of a tenure or holding has been altered in Bengal (Sec. 88).

4. The alterations made in sections 33 and 42 intended to give Revenue Officers and courts a wider discretion in dealing with agreements and compromises (Secs. 109B, 109C and 147A).

5. The alteration in sec. 44 limiting the right to institute a suit in the manner therein provided to co-sharer landlords who collect their shares of the rent separately (148A).

6. The omission of sec. 54 by which it is provided that Sec. 310A, of the Code of Civil Procedure (Act XIV of 1882) should not apply in the case of sales in execution of rent decrees (Sec. 170).

The remaining changes have been made for the purpose of removing practical defects pointed out by persons consulted or are mere changes in drafting.

Some of these alterations are decidedly improvements upon the Bengal Act, especially the provision about agreements and compromises and the provision saving the operation of Sec. 310A of the Code of Civil Procedure (O. XXI, r. 89 of the New Code) in rent execution cases, and the new province may be congratulated on the result of this new legislation.

CHAPTER II.

AN ANALYSIS OF THE PROVISIONS OF THE BENGAL TENANCY ACT.

PART I.

SUBSTANTIVE PROVISIONS REGARDING THE RIGHTS AND OBLIGATIONS OF DIFFERENT CLASSES OF LANDLORDS AND TENANTS.

The Bengal Tenancy Act divides the agricultural community into two classes, landlords and tenants, or rent receivers and rent payers. A landlord may be either a proprietor, a tenure-holder or a raiyat. A proprietor is the owner of an estate or share of an estate. He may sublet his estate or a share of it to a tenure holder, in which case he is the landlord of the tenure holder, or he may manage his estate himself, in which case he is the landlord of the raiyats who hold the land directly under him. Similarly a tenure-holder may sublet his tenure to a subordinate tenure-holder, in which case the former is the landlord of the latter. Or, if a tenure-holder manages his tenure himself, he is the landlord of the raiyats who hold under him. A raiyat's interest is called a holding. A raiyat who sublets his holding or part of it to an under-raiyat is the landlord of the under-raiyat.

A tenant may be either a tenure-holder, a raiyat or an under-raiyat. A tenure-holder is the tenant of the proprietor or superior tenure-holder under whom he holds. A raiyat is the tenant of the proprietor or tenure-holder under whom he holds. And an under-raiyat is the tenant of the raiyat or superior under-raiyat under whom he holds. The Bengal Tenancy Act is mainly concerned with the rights and duties of the various classes of tenants. These will be described separately for each class.

- Certain provisions of the Act are, however, common to all tenants. The rent of a tenant is whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant. Every tenant is liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has previously been paid by him; and is entitled to a reduction of rent for any deficiency proved by measurement to exist in the area of his tenure or holding, as compared with the area for which rent has previously been paid by him.
- Provisions common to all tenants.**
 Rent. Sec. 3(5)
- Alteration of rent owing to alteration of area.**
 Section 52.
- Subject to agreement or established usage, the money**
 Payment of rent by instalments.
 Section 53.
- Section 55.**
 lord is bound to credit the payment accordingly. Every tenant, who makes a payment of rent, is entitled to obtain from his landlord a written receipt containing certain specified particulars. If a landlord fails to give his tenant a proper receipt, the tenant may, on instituting a suit, recover from the landlord as a penalty a sum not exceeding double the amount of the rent paid; and the landlord is also liable to be fined by the Collector a sum not exceeding 50 rupees. If a landlord refuses to receive a payment of rent or to grant a receipt for it, the tenant may, under certain conditions, deposit the rent in Court, obtaining a receipt from the Court.
- Receipts for rent.**
 Section 56.
- Section 58.**
- Deposit of rent in Court.**
 Section 61.
- Interest on arrears of rent.**
 Section 67.
- 12½ per cent per annum until it is paid, or until the landlord

institutes a suit for its recovery. If in any suit brought for

Damages for
neglect to pay
rent.

the recovery of arrears of rent, it appears that the tenant has without reasonable or probable cause, neglected or refused to pay his rent, the

Section 68.

Court may award the landlord damages not exceeding 25 per cent of the amount decreed, in lieu of interest ; and similarly, if a landlord brings a suit for the recovery of arrears of rent without reasonable or probable cause, the Court may award the tenant damages, not exceeding 25 per cent of the amount

Illegal exactions.

claimed. All impositions upon tenants, such as *abwab*, *mahtut*, &c., in addition to the actual rent, are illegal, and all stipulations and reser-

Section 74.

vations for the payment of such are void. Any tenant from whom such payments are exacted, may institute a suit for their recovery together with a penalty.

Section 75.

The following provisions not confined to rent, also apply to all classes of tenants. A division of a tenure or holding or distribution of the rent

Division of a
tenure or hold-
ing.

Section 88.

payable in respect thereof, is not binding on the landlord unless made with his consent. No tenant can

Ejectment.

Section 89.

Contracts be-
tween landlord
and tenant.

be ejected from his holding except in execution of a decree. A landlord and a tenant are debarred from entering into certain contracts purporting to deprive the tenant of rights to which he is entitled under the Act. No Court

Section 178.

or Revenue Officer can give effect to any agreement or compromise, made by a landlord and tenant, the terms of which, if embodied in a contract, could not be enforced under the Act. But the Act

Section 109 B
and Section 147
A.

does not affect any custom, usage or customary right, not

Customary
rights.

Section 183.

Denial of land
lord's title.

Section 186 A.

inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. When in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord, by setting up, without reasonable or probable cause,

title in a third person or himself, the Court may award the landlord damages up to an amount not exceeding ten times the tenant's rent.

The remaining substantive provisions of the Act apply to particular classes of tenants, *vis.*, tenure-holders, raiyats and under-raiyats, and these will now be dealt with in order.

(1) TENURE-HOLDERS.

The Act describes rather than defines the distinction between a tenure-holder and a raiyat. Practically a tenure-holder is a person who has acquired a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it ; while a raiyat is a person who has acquired a right to hold land for the purpose of cultivating it himself.

There are three kinds of tenures,—

- (1) those which are held at a rent or rate of rent, which is fixed in perpetuity,
- (2) permanent tenures,
- (3) temporary tenures.

The rents of tenures which have been held at a rent or rate of rent, which has not been changed since the Permanent Settlement, cannot be increased except on the ground of increase of area. When it is shown that the rent of any tenure has not been changed for 20 years, it shall be presumed, until the contrary is shown, that it has been held at that rent since the Permanent Settlement. Tenures at fixed rents or rates of rent may also be created by the grant of a lease by any proprietor or holder of a permanent tenure in a permanently settled estate. In temporarily settled estates, the right to hold a tenure at a rent or rate of rent fixed in perpetuity can only be conferred by Government. The proprietor can only grant a right to hold at a rent or rate of rent fixed for the period of settlement, and the rent so

Tenures at fixed rents or rates of rent.

Section 50.

Section 179.

In temporarily settled estates.

Secs. 191 & 192.

fixed is liable to be enhanced, when any fresh settlement of the Land Revenue is made.

Permanent tenures are heritable and not held for a limited time, but their rents may be enhanced by contract or by suit, subject to the provisions of the Act. When a permanent tenure has been held since the Permanent Settlement, its rent is not liable to enhancement, except on proof that the landlord is entitled to enhance by local custom or the conditions under which the tenure is held, or that the tenure-holder, by receiving reductions of his rent otherwise than on account of a diminution of the area of the tenure has subjected himself to the payment of an increased rent, and that the lands are capable of affording it. The rent of a permanent tenure held since the Permanent Settlement may also be altered on the ground of alteration of area. The rents of permanent tenures, which are liable to enhancement of rent, may be enhanced either by contract or by a Court. There is no restriction on the enhancement by contract of the rent of a permanent tenure-holder ; but a Court may only decree an enhancement up to the limit of the customary rate payable for similar tenures in the vicinity, or if there is no such customary rate, up to such limit as the Court thinks fair and equitable. The rent fixed by the Court shall be such as to leave the tenure-holder as profit not less than 10 per cent of the balance which remains, after deducting the expenses of collection from the gross rents payable to the tenure holder, including in the gross rents a fair and equitable rent for any land occupied by the tenure-holder himself, or let out by him rent-free or at a beneficial rent. When the rent of a tenure-holder has been enhanced by a Court or by contract, it cannot be again enhanced by a Court for fifteen years.

A permanent tenure-holder cannot be ejected except on the ground that he has broken a condition, on breach of which he is, under the terms of his contract, liable to be ejected ; and if the contract was made after the passing of the Act, the condition must be consistent with the provisions of the Act. A permanent tenure-holder cannot be ejected for arrears of rent, but his tenure may be sold in execution of a decree for arrears of rent, and the rent is the first charge thereon. A permanent tenure may be transferred or bequeathed like other immoveable property ; but the purchaser, usufructuary mortgagee or heir of a permanent tenure must, through the Collector of the district, notify his acquisition to the landlord, and pay the landlord a prescribed fee, unless he has acquired the tenure at a sale in execution of a decree for arrears of rent due in respect of the tenure. The acceptance of the fee by the landlord does not bind the landlord in any way, but if the tenure is really permanent, the transfer becomes valid on the payment of the fee to, and receipt of the notice by, the Collector. Permanent tenures may be created by an express grant or by custom and course of dealings. Their essence is that they are not held for a limited time.

Temporary tenures, on the other hand, are held for a limited time. The Act contains no special provisions regarding them. They are regulated by the terms of the contract made between the landlord and the tenant.

(2) RAIYATS.

The Act deals with four classes of raiyats,—

- (1) Raiyats holding at a rent or rate of rent fixed in perpetuity.
- (2) Settled raiyats.
- (3) Occupancy raiyats.
- (4) Non-occupancy raiyats.

Provisions
common to all
rai-yats.

Subletting.
Section 85.

Surrender.
Section 86.

Abandonment.
Section 87.

Compensation
on ejection for
improvements.
Section 82.

and for crops
sown.

Section 156.

Those provisions of the Act which are common to all rai-yats will first be described. Any raiyat may sublet the lands of his holding, but if he sublets otherwise than by a registered instrument, the sublease is not valid against the landlord, unless made with the landlord's consent. No sublease for a term exceeding nine years is valid. Any raiyat, not bound by a lease or agreement for a fixed period, may surrender his holding at the end of any agricultural year. But unless he gives three months' notice of his intention to surrender, he is liable for the rent for the year following the date of surrender. And if the holding is subject to an incumbrance secured by a registered instrument, the surrender is only valid, if made with the consent of the landlord and the incumbrancer. If a raiyat abandons his holding, the landlord may enter upon it and either let it out to another tenant, or take it into cultivation himself, at any time after the expiration of the agricultural year in which the original raiyat ceased to cultivate; but before entering into possession, the landlord must give notice of his intention to the Collector.

Any raiyat, on being ejected from his holding, is entitled to compensation for any improvements which he has made thereon, and cannot be ejected until the landlord has paid him the compensation assessed by the Court. The right to make improvements differs for various classes of rai-yats and will be described in the paragraphs below which deal separately with each class. When a raiyat has, before the date of his ejection, sown or planted any crops in the land, he is entitled at the option of his landlord, either to retain possession of the land on such terms as the Court may deem reasonable, until the crops are reaped, or to receive from the landlord the value of the crops as estimated by the Court. The raiyat is also entitled to receive from the landlord the value of any labour and capital

expended by him in preparing the land for the sowing of crops, even though no crops have actually been sown. But no such compensation is payable, when the raiyat after the commencement of the ejectment proceedings, has cultivated or prepared the land contrary to local usage.

When the rent of a raiyati holding has not been changed since the Permanent Settlement, it cannot be increased except on the ground of an alteration in the area of the holding. When it is shown that the rent of any holding has not been changed for 20 years, it shall be presumed, until the contrary is shown, that it has been held at that rent since the Permanent Settlement. Leases at rents or rates of rent fixed in perpetuity can only be granted by a proprietor or permanent tenure-holder in a permanently settled estate. In a temporarily settled estate, the rents of all raiyati holdings are liable to enhancement at every fresh settlement of the Land Revenue, unless the right to hold beyond the time of the settlement at a particular rate of rent has been expressly recognised by a Revenue authority empowered by Government to make definitively or confirm settlements.

Raiyats holding at rents or rates of rent fixed in perpetuity are subject to the same provisions regarding the transfer of, and succession to, their holdings as permanent tenure-holders, *i. e.* such holdings are transferable and heritable, subject to notice and payment of the prescribed fee to the landlord. A raiyat, holding at a rent or rate of rent fixed in perpetuity, cannot be ejected by the landlord except on the ground that he has broken a condition consistent with the Act, on breach of which he is under his contract with his landlord, liable to be ejected. Nor can such a raiyat be ejected for arrears of rent, but his holding may be sold in execution of a decree for

arrears of rent, and the rent is the first charge thereon. A raiyat holding at fixed rates has the same right to make improvements as an occupancy raiyat (see *infra*).

Every person who, for twelve years, has continuously held land as a raiyat in any village, becomes at the end of that period, a settled raiyat of the village. A person is deemed for the purposes of the definition to have held as a raiyat any land held as a raiyat by a person whose heir he is. And in any proceeding under the Act, it shall be presumed, until the contrary is proved, that any person, holding any land as a raiyat, has held it or part of it for twelve years continuously as a raiyat, and that he is therefore a settled raiyat of the village in which the land lies. Every settled raiyat of a village has a right of occupancy in all land for the time being held by him as a raiyat in that village.

A right of occupancy may in some cases be acquired also by purchase, but the purchaser of a right of occupancy does not thereby acquire the status of a settled raiyat. A man can become a settled raiyat of a village, only by holding land as a raiyat in the village for twelve continuous years. A holder of occupancy rights who is not a settled raiyat of a village, merely has occupancy rights in the holding which he has acquired by purchase. If he takes up other lands for cultivation, he will not obtain occupancy rights in them, until he has held lands in the village as a raiyat for twelve continuous years. A settled raiyat on the other hand obtains a right of occupancy directly he takes up any fresh land. This, however, is the only distinction between a settled raiyat and an occupancy raiyat. The incidents of occupancy right are the same in both cases.

A raiyat with a right of occupancy may use his land in any manner which does not materially impair its value, or render it unfit for the purposes of the tenancy. He cannot be ejected except in execution of a decree for ejectment, passed on the ground that he has used the land of his holding in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the provisions of the Act, on breach of which he is under his contract liable to be ejected. An occupancy raiyat cannot be ejected for non-payment of rent, but his holding may be sold in execution of a decree for arrears of rent, and the rent is the first charge thereon. A right of occupancy is heritable, but is not transferable without the landlord's consent, unless there is an usage to the contrary. An occupancy raiyat can make an improvement in respect of his holding, and can carry out any work which adds to the value of the holding and is suitable to the holding and consistent with the purpose for which it was let, unless the improvement affects other holdings also, when the landlord has the prior right to make it.

Incidents of occupancy right.
 Section 23.
 Ejectment.
 Section 25.
 Section 65.

Heritability and transferability.
 Section 26.
 Section 183.

Improvements.
 Sections 76 and 77.

An occupancy raiyat is required to pay rent for his holding at fair and equitable rates. Where an occupancy raiyat pays a money rent, such rent can be enhanced by contract between the landlord and his tenant only under certain restrictions. The rent cannot be enhanced oftener than once in fifteen years. The enhancement must not exceed two annas in the rupee, unless it is made in consideration of release from the obligation to grow a special crop for the convenience of the landlord, or on the ground of an improvement of the holding effected by or at the expense of the landlord. In these two cases, there is no limit to the amount of the enhancement, but

Money rent of occupancy raiyats.
 Section 24.

Enhancement by contract.
 Section 29.

in the latter case, the enhancement is payable only so long as the improvement exists and produces its estimated effect in respect of the holding. In all cases, the contract of enhancement must be proved either by a written and registered document or by actual payment of the enhanced rent for a continuous period of not less than three years.

Enhancement
by suit.

Section 30.

The landlord of an occupancy raiyat may obtain an enhancement by suit on any of the following grounds,—

- (a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy raiyats for land of a similar description and with similar advantages in the same village, or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate ;
- (b) that there has been a rise in the average local prices of staple food crops during the currency of the present rent ;
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of the landlord, during the currency of the present rent ;
- (d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

The court shall not decree any enhancement which is under the circumstances of the case unfair or inequitable ; and if an enhancement has been

Section 35.

made by contract, or by suit on the ground that the rate of rent is below the prevailing rate, or on the ground of a rise in prices, or if a suit claiming an enhancement on

Section 37.

either of these grounds has been dismissed on the merits, no further suit for enhancement on either of these grounds shall be entertained for fifteen years.

Reduction of
money rent.

Section 38.

An occupancy raiyat may obtain a reduction of his money rent by suit on either of the following grounds,—

- (a) that the soil of the holding has permanently deteriorated through no fault of the raiyat, or
- (b) that there has been a fall in the average local prices of staple food crops.

The Act contains no provision for the enhancement or reduction of the rent of an occupancy raiyat when paid in kind, but either the landlord or the tenant may apply to have such rent commuted to a money rent.

There are certain limitations regarding the accrual of occupancy rights. Where such rights become vested in a proprietor or permanent tenure-holder, who is the immediate landlord of an occupancy holding, they cease to exist and and merge in the superior landlord's interest.

Limitations on the acquisition of occupancy rights by landlords

Section 22

When a person, who is jointly interested in land as a proprietor or permanent tenure-holder, acquires an occupancy right, he is entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the shares of the rent which may be from time to time payable to them; but if he sublets the land, the sublessee will become a tenure-holder or a raiyat as the case may be. Finally a temporary tenure-holder cannot, during the term of his tenure, acquire a right of occupancy in any land comprised in his tenure.

No rights of occupancy accrue in proprietor's private land, where such land is let out under a lease for a term of years or under a lease from year to year. Nor do such rights accrue in Government lands in a cantonment or in lands acquired under the Land Acquisition Act, while they are the property of Government or a local authority or a Railway Company.

Proprietor's private land.

Section 116.

Utbandi and diara.

Section 180.

And in land held under an *utbandi* tenancy and in *chur* or *diara* land, a raiyat does not acquire a right of occupancy in land, until he has held the land for twelve continuous years.

No contract between a landlord and tenant can bar in perpetuity the acquisition of an occupancy right, or take away an occupancy right which has accrued. But where a lease is granted *bona fide* for the reclamation of waste land, the accrual of occupancy rights can be barred till the expiry of the term of the lease; and where a landlord has reclaimed waste lands by his own servants or by hired labour and then lets it out to raiyats, the accrual of occupancy rights can be barred for thirty years. The accrual of occupancy rights may also be barred in orchard or horticultural land, temporarily let out for cultivation with agricultural crops.

Raiyats not having a right of occupancy are called non-occupancy occupancy raiyats. They are raiyats who have not cultivated land continuously in a village for twelve years, and have not purchased the rights of occupancy in the holdings which they cultivate. Though they have not the same rights as occupancy raiyats, they nevertheless enjoy a considerable measure of protection.

A non-occupancy raiyat is liable to pay for his holding such rent as may have been agreed on between himself and his landlord at the time he was admitted to occupation. Such rent may be enhanced by registered agreement at any time and to any amount; and if an enhanced rent has been actually paid for three continuous years, it becomes the rent payable, even in the absence of a registered agreement. But if the non-occupancy raiyat refuses to agree to the enhancement, the landlord must institute a suit for ejectment. The Court is then required to determine what is a fair and equitable rent for the holding, and if the non-occupancy raiyat agrees to pay the rent so determined, he is entitled to remain in occupation of his holding at that rent for a term of five years. On the

expiry of that period, he is liable to ejectment unless by that time he has acquired a right of occupancy.

Ejectment. A non-occupancy raiyat cannot be ejected
Section 44. except in execution of a decree passed on one of the following grounds,—

- (a) that he has failed to pay an arrear of rent ;
- (b) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the Act, on breach of which he is under the terms of his contract liable to be ejected ;
- (c) where he has been admitted to occupation under a lease, that the term of his lease has expired ;
- (d) that he has refused to pay a fair and equitable rent determined by the Court, or that the term for which he is entitled to hold at such rent has expired, and he has not become an occupancy raiyat.

But where a decree for ejectment is passed on the ground of failure to pay an arrear of rent, it shall not be executed if

Section 66.

the non-occupancy raiyat pays the decretal amount, with costs, within fifteen days of the date of the decree or such further period as may be allowed by the Court. And where a non-occupancy raiyat

has been in occupation of land before the execution of a lease for a term of years, he is not to be deemed to have been admitted to occupation under the lease, and is not liable to ejectment on the ground that the term of the lease has expired. Where a non-occupancy

raiayat has been admitted to occupation under a lease for a term of

Section 45.

years, a suit for his ejectment cannot be brought, unless a notice to quit has been served on him not less than six months before the expiration of the term, and it must be brought within six months from the expiration of the term.

A Full Bench of the High-Court have differed on the question whether the holding of a non-occupancy raiyat is heritable or not. It is however not transferable without the consent of the landlord, unless there is a usage to the contrary. A non-occupancy raiyat has the right to make a well for the irrigation of his holding, and to construct a dwelling house for himself and his family. He may also call upon his landlord to make any other improvement or work which adds to the value of the holding, is suitable to the holding, and consistent with the purpose for which it was let; and if the landlord fails to make the improvement within a reasonable time, the non-occupancy raiyat may make it himself.

Differences
between occu-
pancy and non-
occupancy
raiats.

The main differences between the position of an occupancy raiyat and that of a non-occupancy raiyat are therefore the following,—

- (a) The enhancement by contract of the rent of an occupancy raiyat cannot be made oftener than once in 15 years and must not exceed two annas in the rupee, except on the ground of a landlord's improvement or release from the obligation to grow a special crop. There are no such limitations on the enhancement of the rent of a non-occupancy raiyat.
- (b) An occupancy raiyat can only be ejected only on the ground that he has used the land of his holding in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the Act, on breach of which he is, under his contract, liable to be ejected. A non-occupancy raiyat may also be ejected for failure to pay his rent. If he has been admitted to occupation under a registered lease, he may be ejected on the ground that the term of

the lease has expired. And if a fair and equitable rent has been settled for him by a Court, he may be ejected for refusal to agree to pay such rent, or if he agrees, he may be ejected on the expiration of five years from the date of the agreement, unless he has by that time acquired a right of occupancy.

- (c) An occupancy raiyat has the prior right to make improvements on his holding. A non-occupancy raiyat can only make improvements, other than an irrigation well and a dwelling house, if his landlord has been asked to make the improvement and has failed to do so.

(3) UNDER-RAIYATS.

An under-raiyat is a tenant who holds under a raiyat or under another under-raiyat. An under-raiyat, holding under a written lease, may be ejected in execution of a decree passed on the ground that the term of the lease has expired. An under-raiyat, not holding under a written lease, may be ejected at the end of any agricultural year, provided that his landlord has during the previous agricultural year served upon him a notice to quit. An under-raiyat may also be ejected for failure to pay his rent. But a decree for ejectment passed on this ground shall not be executed, if the under-raiyat pays up the decretal amount and the costs of the suit within fifteen days from the date of the decree, or such further period as may be allowed by the Court. Under-raiyats may however acquire occupancy rights if there is a custom or usage to that effect in the area in which they hold, and in that case they would apparently be protected from ejectment except on the grounds on which occupancy raiyats can be ejected.

The rent of an under-raiyat, if fixed by a registered lease or agreement, must not exceed the rent payable by his landlord by more than 50 per

cent ; and if not fixed by a registered lease or agreement, the under-raiyat's rent must not exceed his landlord's rent by more than 25 per cent. If the raiyat landlord abandons the holding during the term of a sublease which has been created

Protection of
under-raiyat in
case of abandon-
ment by raiyat,
section 87 ;

his sublease

and in case of
distrainment,
section 121.

by a registered instrument, the under-raiyat, on condition of paying up all arrears of rent due from his landlord, has a right to retain the holding for the remainder of the term of his sublease at the rent paid by the raiyat who has ceased to cultivate the holding. Where a holding has been sublet with the written consent of the superior landlord, its produce cannot be distrained for arrears of rent due to the superior landlord.

PART .II

PROCEDURE FOR THE RECOVERY OF ARREARS OF RENT.

Any instalment or part of an instalment of rent not paid

Arrears of
rent.
Section 54.

Section 65.

Section 66.

when it falls due becomes an arrear of rent. A permanent tenure-holder, a raiyat holding at fixed rates and an occupancy raiyat are not liable to ejectment for arrears of rent, but the tenure or holding is liable to sale in execution of a decree for rent, and rent is the first charge on the tenure or holding. If arrears of rent are due from tenants of other classes, viz. temporary tenure-holders, non-occupancy raiyats and under-raiyats not possessing a right of occupancy, the landlord may bring a suit for their ejectment, whether he has obtained a decree for the recovery of the arrear or not ; but the decree for ejectment shall not be executed, if the tenant pays into Court the amount of the arrear with interest and the costs of the suit within fifteen days from the date of the decree, or such further period as the Court may allow.

It is not however necessary in all cases for the landlord to bring a suit for the recovery of arrears of rent, or for ejectment of the tenant. In the

Distrainment.

Section 121.

case of an arrear from a raiyat or an under-raiyat which has not been due for more than a year, the landlord may apply to the Civil Court to recover the arrear by distraining the crops or other products of the earth, which are standing ungathered on the holding, or have been reaped and gathered and are lying on the holding, or have been removed to the threshing floor. The Court, on being satisfied that

the arrear is due, is required to depute an
 Section 124.

officer to take charge of the produce and to sell it within not less than three or more than seven days after making the distraint, (except where a longer time may be required for storing the produce), unless the tenant meanwhile pays up the arrear with all costs of the distraint proceedings.

Again, where rent is taken by appraisement or division
 Produce rents. of the produce, either landlord or tenant may
 Sections 69-71. apply to the Collector to appraise or divide the produce, and the Collector's order is final, unless he thinks fit to refer any point to the Civil Court. Where rent is taken by appraisement of the produce, the tenant is entitled to the exclusive possession of the produce. Where rent is taken by division of the produce, the tenant is entitled to the exclusive possession of the whole produce until it is divided, but is not entitled to remove any portion of the produce from the threshing floor, so as to prevent the due division thereof at the proper time. If the tenant removes any portion of the produce so as to prevent a due appraisement or division,* the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest. An order passed by the Collector for appraisement does not prevent the execution of an order passed by a Civil Court for distraint,

A suit for the recovery of arrears of rent must be brought in the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought. But in areas in which a record-of-rights has been prepared and finally published and in which such record is maintained, the Local Government may allow any landlord to recover rents by means of the Certificate Procedure, under the conditions laid down in Chapter XIII A of the Act.

Suits for recovery of arrears of rent.
Section 144.

Certificate procedure.
Section 158A.

Where a landlord has instituted a suit for recovery of arrears of rent against a raiyat, he cannot institute another suit for recovery of any rent of the same holding, until after three months from the date of the institution of the previous suit, unless he has, under sec. 373 of the Code of Civil Procedure (O. XXIII, Procedure. r. 1 of Act V of 1908), withdrawn the original suit and obtained the permission of the Court to bring a fresh suit. Certain special rules are applicable to the procedure in rent suits. The plaint must contain a full description of the land held by the tenant, and, (where a record-of-rights has been prepared for the land), a list of the survey plots comprised in the tenancy, and a statement of the rental of the tenancy according to the record-of-rights; provided that if the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement, the Court may obtain from the Collectorate, without payment of fee, a verified copy of or extract from, the record-of-rights relating to the tenancy. The ordinary procedure in civil suits is greatly simplified for rent suits. No written statement may be filed without the leave of the Court. The execution of the decree may be ordered on oral application, unless it is a decree for ejectment. If the defendant admits that any amount is due from him, but pleads that

Successive rent suits.
Section 147.

Admissions.
Sections 149 and 150.

it is due to a third party, or that the amount claimed is in excess of the amount due, the court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount admitted to be due. Appeals against orders and

decrees passed in rent suits are barred in certain cases ; and applications to set aside ex-parte decrees, or for review of judgment, must show the injury sustained by the applicant, and must be accompanied by a deposit of the amount, if any, which is admitted to be due, or such amount as the Court may, for reasons to be recorded in writing, direct.

Effects of a
sale for arrears
under a decree.

Section 159.

When a tenure or holding is sold in execution of a decree for arrears of rent, the purchaser acquires it subject to any protected interests which may exist, *viz* :—

Protected
interests.

Section 160.

- (a) any under-tenure existing from the time of the Permanent Settlement ;
- (b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement.
- (c) any lease on land whereon dwelling-houses, manufactories or other permanent buildings have been erected or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue Officer ;
- (f) any right conferred on any occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and

(g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

But the purchaser may annul any lien, subtenancy, easement, or other right or interest created by
Incumbrances.
Section 161. the tenant on the tenure or holding or in limitation of his own interest thereon, not being a protected interest as defined above. Provided that if the incumbrance has been created by a registered instrument, of which a copy has been served on the landlord not less than three months before the accrual of the arrear, the tenure or holding shall be put up to sale, subject to such registered and notified incumbrances; and if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, the tenure or holding shall be sold subject to such incumbrances; otherwise, it will, if the decree holder so desires, be sold on a subsequent day with power to annul all incumbrances. A purchaser having power to annul incumbrances must serve a notice on the incumbrancer through the Collector, within one year from the date of sale or the date on which he first has notice of the incumbrance, whichever is later.

The tenant or any person, having in the tenure or holding an interest voidable on the sale, may secure the release of the tenure or holding from attachment or sale, by paying into Court, before the sale, the amount of the decree together with the costs incurred; and the sale shall be set aside if the tenant, within thirty days of the date of sale, pays into Court the decretal amount with costs, for payment to the judgment debtor, and five per cent of the purchase money for payment to the purchaser.

Release of tenure or holding from sale.
Section 170.

Setting aside sale.
Section 174.

What land-
lords may bring
rent suits.

A tenure or holding can only be sold in execution of a decree for arrears of rent, provided that the suit has been brought—

Section 158 B.

(a) by a sole landlord,

(b) by the entire body of landlords, or

(c) by one or more co-sharer landlords, who has or who have sued for the rent due to all the co-sharers in respect of the entire tenure or holding and have made all the remaining co-sharers parties defendant to the suit. But if such co-sharer landlord is unable to ascertain the rent due for the tenure or

holding owing to the refusal or neglect of the

Section 148 A.

tenant or of the other co-sharers to supply information on the point, he may sue for his own share of the rent only, and the tenure or holding may be sold in execution of a decree obtained by him. Where a suit has been brought by one or more co-sharer landlords, all the other co-sharers having been made parties, payment of the amount due under

the decree shall be made out of the sale proceeds to the decree-holder and to the other

Section 169

co-sharer landlords, in proportion to the amount found to be due to each. When a co-sharer landlord brings a suit for the share of the rent due to himself alone, and does not make the other co-sharer landlords parties, the decree obtained is merely a money decree and the tenure or holding cannot be sold in execution of it.

PART III.

THE RECORD OF RIGHTS.

A survey and the preparation of a record-of-rights may be ordered by the Local Government, with the

Initiation of
Section 101
operations.

previous sanction of the Governor-General in Council, for any local area, estate, tenure or part thereof; and without such sanction, when not less than half the landlords or a quarter of the tenants in the local area, estate or tenure apply for a record-of-rights, or where its preparation is necessary to settle or avert disputes between

landlords and tenants ; or where the local area, estate or tenure belongs to, or is managed by the Government or Court of Wards, or a Manager appointed by the District Judge ; or where a record-of-rights is required as a basis for settling the Land Revenue.

Particulars to be entered in the record of rights. Section 102.

The particulars which are usually entered in the record-of-rights are the following :—

- (a) the name of each tenant or occupant ;
- (b) the class to which each tenant belongs, that is to say, whether he is tenure-holder, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non-occupancy raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier ;
- (d) the name of each tenant's landlord ;
- (dd) the name of each proprietor in the local area or estate ;
- (e) the rent payable at the time the record-of-rights is being prepared ;
- (f) the mode in which that rent has been fixed whether by contract, by order of a Court, or otherwise ;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases ;
- (gg) the rights, and obligations of each tenant and landlord in respect of—
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land ;

(h) the special conditions and incidents, if any, of the tenancy ;

(i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared ;

(j) if the land is claimed to be held rent free, whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

A record of irrigation rights may also be prepared with-
Section 102 A. out a general record of agricultural rights, if this is necessary to avert disputes.

The Act does not lay down any procedure for the pre-
Procedure. paration of a record-of-rights. This is pre-
Chapter VI of scribed by rules framed by Government under
the Government Rules. the Act. Each village is first surveyed on the
scale of 16 inches to the mile, every field being shown on the
map. A larger scale is sometimes adopted when the fields
are very small. A list of the fields is then drawn up, show-
ing the name of the occupant of each. All the fields held by
the same occupant under the same title are then brought
together on one sheet called a *khatian*. The contents of
each *khatian* are then read out by a Revenue Officer to the
landlord and tenant concerned. Disputes, if any, are decided,
the status of the occupant ascertained, and the rent payable
by him, if any, recorded. The rent to be recorded must be
Section 109 C. the rent legally payable, but if the landlord
and tenant agree as to the rent which shall be recorded as
payable, the Revenue Officer may settle such rent as a fair
and equitable rent, if he is satisfied that it is so, even though
the terms of the agreement are such that, if embodied in a
contract, they could not be enforced under the Act. A record
of the landlord's interests, known as the *khwat*, is similarly
prepared in the same way. The *khwat*, and the *khatians*
together constitute the draft record. This is published by
Section 103 A. being read out in the village concerned in
presence of the landlords and tenants. Objections are

received within a certain period, usually a month from the date of publication. These are considered and decided by a Revenue Officer, and the record is then corrected in accordance with the orders passed by him.

Up to this stage, the procedure is the same for all records-of-rights. But the procedure for subsequent stages varies, according as the record-of-rights is or is not to be followed by a settlement of the Land Revenue. If a settlement of the Land Revenue is to be made, the Revenue Officer, after deciding the objections raised to the draft record, is required to settle fair and equitable rents for tenants of every class. He must do the same, where the estate or tenure for which the record is being prepared belongs to the Government, unless it appears to the Local Government expedient that rents should not be settled for tenants of every class in the particular estate or tenure. In settling rents in a Government estate or tenure or for the purpose of assessing the Government revenue, the Revenue Officer may frame a Table of Rates, showing the rates fairly and equitably payable for each class of land in the local area under settlement. This Table of Rates is published and objections considered. It is then applied to the lands comprised in each tenancy, and if the resultant rent is fair and equitable, it is settled accordingly. If it is not practicable to prepare a Table of Rates, or if the rents resulting from the application of such a Table are not fair and equitable, the Revenue Officer must proceed to settle fair and equitable rents in other ways. He may accept an agreement by the landlord and tenant as to the amount of rent payable, provided he is satisfied that such rent is fair and equitable. Or he may himself calculate a fair and equitable rent, having regard to the rules laid down in the Act as to the grounds on

Settlement of rent in connection with a settlement of the Land Revenue.

Section 104.

Table of rates.
Section 104 B.

Other methods of settlement.
Section 104 A.

which rents may be enhanced, or reduced by the Courts. When the Revenue Officer has decided what rents are to be settled as fair and equitable, such rents are entered in a Settlement Rent Roll, which is published, objections being invited as in the case of the publication of the record-of-rights. After the objections have been decided and the Settlement Rent Roll corrected, if necessary, it is submitted to such superior Revenue authority as may be prescribed by Government. Such officer may revise the Rent Roll in such way as he deems necessary after giving notice to the parties. And he then confirms it with or without amendment. The Rent Roll, as confirmed, is then incorporated in the record-of-rights, which is then finally published.

Settlement Rent Roll: Section 104 E.
 Section 104 F.
 Final publication of the record-of-rights.
 Section 103 A.

An appeal lies against any order passed by a Revenue Officer, on an objection filed regarding a Table of Rates or a Settlement Rent Roll, to such superior Revenue authority as the Local Government may prescribe ; and the Board of Revenue may of its own motion or on application, at any time within two years from the date of certificate of final publication, direct the revision of any record-of-rights, after giving notice to the parties concerned. Any party aggrieved by an entry of a rent settled in a Settlement Rent Roll may within six months from the date of the certificate of final publication, or from the date of the disposal of any appeal presented to the Revenue authorities, file a suit in the Civil Court on the following grounds and on no others, *viz.*,

Reference to Civil Court.
 Section 104 H.

(a) that the land is not liable to the payment of rent ;
 (b) that the land, although entered in the record-of-rights as being held rent free, is liable to the payment of rent ;
 (c) that the relation of landlord and tenant does not exist ;

(d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;

(e) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;

(f) that the Revenue Officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under the clause ;

(g) that the special conditions and incidents of the tenancy or any right of way or other easement attaching to the land which is the subject of the tenancy have not, or has not been recorded or have or has been wrongly recorded.

The Court after decision of the suit is empowered to make any alteration considered necessary in the entry of the fair rent settled. But, subject to an order of the Civil Court passed on these specified grounds, the rents settled by the Revenue authorities are final.

Where, however, a settlement of Land Revenue is not being or is not about to be made, the record-of-rights is finally published immediately after the decision of the objections raised on its publication in draft. Rents can then only be settled on the application of the landlord or of the tenant, and such application must be made within two months from the date of the certificate of final publication. In settling rents, the Revenue Officer is required to presume, until the contrary is proved, that the existing rent is fair and equitable, and to have regard to the rules laid down in the Act for the guidance of the Civil Courts in increasing or reducing rents. His decision settling rents has the force and effect of a decree of a Civil Court and is final, subject to an appeal to a Special Judge appointed by the Local Government for the purpose of hearing such appeals.

Finality of settled rents.

Section 104 J.

Settlement of rents where the Land Revenue is not being settled.

Section 105.

Section 107.

Appeals.

Section 109 A.

Decision of
incidental
matters arising
in the course of
the settlement
of fair rents.

Section 105 A.

Section 107.

If in the course of settling rents certain issues arise, the Revenue Officer is empowered to try and decide such issues and to settle a rent in accordance with his decision, which has the force and effect of a decree of a Civil Court between the parties and is final, subject to appeal to the Special Judge. Such issues are,—

(a) whether the land is, or is not, liable to the payment of rent ;

(b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;

(c) whether the relation of landlord and tenant exists :

(d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;

(e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;

(f) whether the special conditions and incidents of the tenancy or any right of way or other easement attaching to the land have not, or has not been recorded or have, or has been wrongly recorded.

If any dispute arises regarding any entry in or omission from a record-of-rights, a suit may be instituted within three months of the date of the certificate of final publication, before a Revenue Officer. The Revenue Officer's decision has the force and effect of a decree of a Civil Court between the parties, and is final, subject to appeal to the Special Judge and to a second appeal to the High Court from the Special Judge's decision.

Decision of
disputes.

Section 106.

Section 107.

Appeals.

Section 109 A.

A Revenue Officer, specially empowered by the Local Government, may, on application, or of his own motion, revise any order settling a rent under section 105, or deciding an issue under section 105 A, or a dispute under section 106,

Revision of
orders settling
rents or decid-
ing disputes.

Section 108.

within twelve months from the passing of any such order.

Correction of
errors in the
record-of-rights.

Section 108 A.

And a Revenue Officer, specially empowered, may, within twelve months from the date of the certificate of final publication, correct any entry in a record-of-rights which, he is satisfied, has been made owing to a *bona fide* mistake. All such orders of Revenue Officers are final, subject to appeal to the Special Judge. A second appeal from the Special Judge's order lies to the High Court, except when the decision merely settles a rent, when there is no second appeal.

Section 109 A.

The Act contains elaborate provisions in order to prevent the clashing of jurisdictions between Revenue Officers trying issues arising under Section 105A, Revenue Officers trying disputes under section 106, and the ordinary Civil Courts. When an order has been passed directing the preparation of a record-of-rights, no Civil Court is allowed to entertain any suit or application for the alteration of any rent, or the determination of the status of any tenant, until after the final publication of the record-of-rights when a settlement of Land Revenue is being or is about to be made; or until three months after the final publication of the record-of-rights, when no settlement of Land Revenue is being made. Where a settlement of the Land Revenue is not being made, no suit can be filed in the Civil Court within three months from the date of the certificate of final publication for the decision of any of the following issues, *viz.*,

Prevention of
clashing of
jurisdictions.

Section 111.

Section 111B.

- (a) whether the land is or is not liable to the payment of rent ;
- (b) whether the relation of landlord and tenant exists ;
- (c) whether the land is part of a particular estate or tenancy ; or
- (d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

But if a suit regarding any of such issues has been filed in a Civil Court before final publication, no such suit can be filed under section 106. And if such a suit has been filed in the Civil Court before final publication, and the issue arises in the course of settling fair rents under section 105, the proceedings for the settlement of a fair rent must be stayed pending the decision of such issue by the Civil Court. Similarly, no Revenue Officer can try under section 105 A any issue which has previously been raised under section 106. He must stay the proceedings for settlement of fair rents, until the dispute under section 106 has been decided. But if the issue has been raised first under section 105A in the course of rent

settlement proceedings, no suit under section 106 can be filed regarding it. Finally, no Civil Court is allowed to entertain any application or suit regarding the settlement of a fair rent or the decision of an issue or dispute, which is, or has been, the subject of an application or suit before a Revenue Officer. Practically, therefore the parties are left free to choose their own venue. They may wait until the Revenue Officer's jurisdiction ceases, and then raise their claims before the Civil Courts in the ordinary course. Or they may, in certain cases under section 111B, by raising their claims before the Civil Court prior to final publication, oust the jurisdiction of the Revenue Officer after final publication. But if one party has, in due course, raised an issue, either before the Revenue Officer or the Civil Court, neither he nor the other party can raise the same issue in another Court.

The Local Government, with the previous sanction of the Governor-General in Council, may empower a Revenue Officer to settle rents in a specified area, if it is satisfied that such a course is necessary in the interests of public order or the local welfare, or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights. In such a case, the

Special settle-
ment of rents
in special cases.

Section 112.

Revenue Officer may, if specially empowered, reduce rents, if in his opinion, the maintenance of existing rent would be unfair or inequitable. In settling rent under this special provision, the procedure for the preparation of a Settlement Rent Roll, prescribed in the case of a settlement of rents made in order to form the basis of an assessment of Land Revenue, is adopted. But the settlement record prepared requires the confirmation of the Governor-General in Council, before it takes effect.

Where rents have been settled by a Revenue Officer, they cannot be enhanced for fifteen years in the case of a tenure or a holding of a raiyat or under-raiyat with occupancy rights, and for five years in the case of the holding of a non-occupancy raiyat or the holding of an under-raiyat not having occupancy rights, except on the ground of a landlord's improvement or a subsequent alteration of the area of the tenure or holding. And such settled rents cannot be reduced within the same periods, except on the ground of an alteration of area, or a permanent deterioration of the soil of the holding not due to the raiyat's fault. In this connection, it is important to notice the distinction between a "settled" rent and a record of the 'rent payable.' Where a record-of-rights is prepared otherwise than in connection with a settlement of the Land Revenue, rents are only settled on the application of the landlord or tenant. Where no such application is made, the record merely shows the rent payable at the time the record was prepared. The restrictions on enhancement described above apply only to settled rents. The rent recorded as payable is liable to enhancement by contract or by suit, in accordance with the provisions of the Act relating to the particular class of tenants concerned in each case.

Where a survey and the preparation of a record-of-rights are undertaken in connection with a settlement of the Land Revenue, the whole cost of the operations is borne by Government. But in other cases, the cost or part of it may be recovered from the landlords or tenants of the area, in such proportions as Government may determine. Such cost includes the estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, and also the cost of preparing copies of survey maps and of the record-of-rights for distribution to the landlords and tenants concerned.

Every entry in a record-of-rights is evidence of the matter referred to in such entry and is presumed to be correct until it is proved by evidence to be incorrect. In all areas for which a record-of-rights has been prepared and finally published, the Civil Court is required in all suits between landlord and tenant as such, to have regard to entries in the record-of-rights relating to the subject matter in dispute, which may be produced before it, unless such entries are proved by evidence to be incorrect. And when a Civil Court passes a decree at variance with such entries, it is required to record its reasons for so doing. And finally in areas for which a record-of-rights has been prepared, the plaint in all suits for recovery of arrears of rent, must contain a list of the survey plots comprised in the tenancy and a statement of the rental of the tenancy according to the record-of-rights. If the Court, for reasons to be recorded in writing, exempts the plaintiff from furnishing such a statement, it must call upon the Collector to supply a certified copy of, or extract from the record-of-rights relating to the tenancy. The law thus ensures the record-of-rights being brought before the Court in all rent suits, whether it is produced by the parties or not.

THE BENGAL TENANCY ACT

ACT NO. VIII OF 1885

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 14th March, 1885.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Whereas it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal ; It is hereby enacted as follows :—

The Bengal Tenancy Act is not a complete code even in respect of the law of landlord and tenant. 6 C. L. J. 273 (see 290) ; 11 C. W. N., 983 (see 996) F. B., *Kripa Sindhu Mukerjee v. Annada Soonduri Debi*. Per Mookerjee J.

CHAPTER I

PRELIMINARY

Short title. 1. (1) This Act may be called the Bengal Tenancy Act, 1885.

Commence-
ment. (2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor-

General in Council, may, by, notification in the local official Gazette, appoint in this behalf.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the town of Calcutta, [any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the Local Government,] the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

[*Explanation.*—The words “the town of Calcutta” mean, subject to the exclusion or inclusion of any local area by notification under section 637 of the Calcutta Municipal Act, 1899, the area described in Schedule I to that Act.]

Sub-section (1) was extended to Chota Nagpur, except the district of Manbhum (Not., Feby. 9th, 1903). At present however Chota Nagpur has a separate Tenancy Act of its own : Act VI of 1908 B.C. The words within heavy brackets in subsection (3) and the Explanation have been added by s. 3, Act I, B. C., of 1907. For obvious reasons the Explanation has been omitted from the Eastern Bengal and Assam Act I of 1908.

Time of commencement of Act.—The Act came into force on the 1st November, 1885 (see notification of the 4th September, 1885, published in the *Calcutta Gazette* of the 9th September, 1885). By Act XX of 1885, the operation of sections 61 to 64, both inclusive, and of Chapter XII of the Act, except such of their provisions as confer power to make rules, was postponed to the 1st February, 1886. The provisions

of sections 61 to 64 relate to deposit of rent, and those of Chapter XII, to distraint. Act XX of 1885 has been repealed by the Repealing and Amending Act, 1891 (Act XII of 1891.)

Amendments of Act.—The Act has been amended by Act VIII of 1886 (1) which slightly modified sections 12 and 13 of the Act, by Act V, B. C., of 1894, (2) which made certain changes in Chapter X of the Act, by the Bengal Tenancy (Amendment) Act III, B. C., of 1898, (3) which repealed Act V, B. C., of 1894 and completely remodelled Chapter X, as well as altered the provisions of sections 30, 31, 39, 52, and 119 of the Act, and by the Bengal Tenancy (Amendment) Act, 1907, I, B. C., of 1907, which introduced very extensive changes into the Act. (4). These latter provisions have been enacted with certain alterations for Eastern Bengal and Assam by Act I of 1908 which was passed on the 4th May 1908 and received the assent of the Governor-General on the 25th May 1908. The provisions of these amending Acts are noticed in the notes to the sections affected by them.

Rent law of Calcutta.—In the town of Calcutta, the relations of landlord and tenant are governed by the Indian Contract Act (IX of 1872), so far as they are applicable. If they are not applicable, then, by section 17 of 21 Geo. III, c. 70, “all matters of contract and dealing between party and party shall be determined in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentus, (Hindus) by the laws and usages of Gentus ; and where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant.” If the provisions of the Contract Act are inapplicable and the parties are English, then, the common law of England will be the law to be applied (*Madhub Chandra Paramanik v. Raj Kumar Das*, 14 B. L. R., 76 ; 22 W. R., 370 ; *Rasik Lal Maduk v. Loknath Karmakar*, 5 Calc., 688 ; 5 C. L. R., 492 ; *Jagat Mohini Dasi v. Dwarkanath Basak*, 8 Calc., 582). The explanation to section (1) has been added by Act I, B. C., of 1907 in consequence of the ruling (*Biraj Mohini Dasi v. Gopeswar Mallik*, 27 Calc., 202), in which it was held that occupancy rights may accrue in those areas which have been included within the town of Calcutta, subsequent to the passing of the Bengal Tenancy Act, 1885. It was considered undesirable that the Act should have any application to the town of Calcutta, as it is now constituted, or as it may

(1) Received the assent of the Governor-General on the 8th March, 1886.

(2) Received the assent of the Governor-General on the 22nd August, 1894.

(3) Received the assent of the Governor-General on the 3rd May, 1898, and came into force on the 2nd November, 1898, the date of its first publication in the *Calcutta Gazette*.

(4) Received the assent of the Governor-General and came into force on the 11th May, 1907.

hereafter be constituted under any future extension or modification of its boundaries. Existing rights and obligations are saved by sub-section (2) added to section 19 by Act I, B. C., of 1907, and for Eastern Bengal by Act I, E. B. C., of 1908.

Any area constituted a Municipality.—The words “any area constituted a Municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the Local Government” were inserted by Act I, B. C., of 1907, in Western Bengal and by Act I, E. B. C., of 1908 in Eastern Bengal and Assam. In the report of the Select Committee on the Bill it was said “the provisions of the Act are intended to apply to agricultural areas, and are unsuitable to such Municipalities or portions thereof as are mainly urban in character. We think that the Government should have power to withdraw from the operation of the Act such municipal urban areas by notification, when it is satisfied by enquiry that such withdrawal is expedient. We consider that the operation of the Act should not be withdrawn from any area until a record of the rights existing under the Act in such area has been made.” Existing rights and obligations are saved by additions made to section 19.

Rent law of Bengal.—The districts which under the Government of India notifications Nos. 2832 and 2833 of the 1st September, 1905, (see *Gazette of India*, September 2nd 1905, Pt. I, p. 636) have since the 16th October, 1905, constituted the province of Bengal are Burdwan, Birbhum, Bankura, Midnapore, Hooghly, Howrah, 24 Parganas, Nadia, Murshidabad, Jessore, Khulna, Patna, Gaya, Shahabad, Saran, Champaran, Mozaffarpur, Darbhanga, Monghyr, Bhagulpur, Purnea, Darjeeling, Sonthal Parganas, Cuttack, Balasore, Angul and Khondmals, Puri, Sambalpur, Hazaribagh, Ranchi, Palamau, Manbhum, and Singhbhum. The Bengal Tenancy Act is in force in all these districts, except as explained below. No part of the Act is in force in Darjeeling, Sambalpur and Angul. Certain portions of the Act have been extended to Cuttack, Puri and Balasore and certain parts of the District of Manbhum. Section 56, section 58, sub-sections (1) and (3) and section 84 only are in force in the Sonthal Parganas.

Rent law of Orissa.—The division of Orissa now consists of the districts of Cuttack, Puri, Balasore, Angul and Sambalpur. The two latter are scheduled districts. In Cuttack, Puri, and Balasore, Act X of 1859 and its amending Acts, VI, B. C., of 1862, and IV, B. C., of 1867 are still current (see *Sadanand Mahanti v. Nauratan Mahanti*, 16 W. R., 289; 8 B. L. R., 280). But by notification, dated the 10th September, 1891, published in the *Calcutta Gazette* of the 16th September, 1891, Part I, page 839 the Lieutenant-Governor of Bengal with the previous sanction of the

Governor-General in Council extended the following portions of the Bengal Tenancy Act to Orissa :—Chapter X and sections 3 to 5, 19 to 26, 41 to 49, 53 to 75, and 191. Similarly, by a notification No. 2448, L. R., dated the 27th June, 1892, published in the *Calcutta Gazette* of the 29th June, 1892, Part I, page 673, the following sections of the Act were extended to Orissa :—sections 27 to 38 and 80. Again, by a notification No. 115, L. R., dated the 5th January, 1893, published in the *Calcutta Gazette* of the 11th January, 1893, Part I, page 20, sections 189 and 190 were extended to Orissa. By notification, No. 99, L. R., dated the 7th January, 1896, published in the *Calcutta Gazette* of the 8th January, 1896, Part I, page 28, the provisions of section 39 were extended to Orissa. By notification No. 971, T. R., dated 17th October, 1896, published in the *Calcutta Gazette* of the 21st October, 1896, Part I, page 1081, sections 7, 40, 52 and 192 were introduced into Orissa. By notification No. 292, L. R., dated the 18th January, 1893, published in the *Calcutta Gazette* of the 25th January, 1893, Part I, page 59, the rules framed and validated under sections 189 and 190 of the Tenancy Act were declared to be in force in Orissa, so far as they relate to the sections of the Bengal Tenancy Act which have been, or may be, extended to that division.(1) By notification No. 957, T. R., dated 5th November, 1898, published in the *Calcutta Gazette* of Nov. 9th, 1898, Part I, page 1156A, the provisions of the Bengal Tenancy (Amendment) Act, III, B. C., of 1898 were extended to the division of Orissa. By notification No. 620, L. R., dated the 27th January, 1906, published in the *Calcutta Gazette* of the 7th February, 1906, Part I, p. 176, sections 93 to 103 of this Act were extended to the districts of Cuttack, Puri and Balasore in the Orissa division. By notification No. 1816, T. R., dated the 21st August, 1906, published in the *Calcutta Gazette*, dated 29th August, 1906, Part I, p. 1658, the provisions of Chapter XI, and by notification No. 20, L. R., dated the 3rd January, 1907, published in the *Calcutta Gazette* of the 9th January, 1907, Part I, p. 54, the provisions of Chapter XIV of the Act were extended to the districts of Cuttack, Puri and Balasore in the Orissa Division.

Under the provisions of section 2, clause (2), of this Act, so much of Act X and of its amending Acts VI, B. C., of 1862, and IV, B. C., of 1867, as is inconsistent with the sections of the Bengal Tenancy Act that have been extended to Orissa, stands repealed. The other portions of Act X., etc, which are not inconsistent with these sections continue in force.

The laws in force in the mahal of Angul which is a scheduled district, are detailed in the schedule to Regulation Angul.

No. I of 1894, the Angul District Regulation, pub-

(1) See also Board's Settlement Manual, 1908, Part I, Chap. 2, rule 7, p. 3.

lished in the *Govt. of India Gazette*,* of the 13th January, 1894, Part I, p. 17. Neither Act X of 1859, nor any rent Act is mentioned in the schedule to this Regulation, and as by section 3, sub-sec. (2), an enactment not comprised in the schedule shall not be deemed to be in force in Angul unless previously or subsequently expressly extended thereto, and as neither Act X of 1859 nor Act VIII of 1885 has been extended to Angul, it follows that there is no rent law in Angul. It is understood that in Angul Government demands and rents are realized according to the procedure prescribed in Chapter V of the Angul District Regulation.

The mahal of Banki was formerly a scheduled district, but since the 1st April, 1882, it has, under the provisions of Act XXV of 1881, been incorporated with the district of Cuttack.

The district of Sambalpur formerly belonged to the Central Provinces. Since the 16th October, 1905, with the exception of the Chanderpur-Padampur Zamindari and the Phuljhar Zamindari, it has been transferred to Bengal. The rent law in force there is the Central Provinces Tenancy Act, I of 1898.

Act X of 1859 prevails in the district of Darjeeling. (See note to Bengal Code, 3rd edition, Vol. III, p. 182). There is no local extent clause in the Act, but Darjeeling was part of Bengal when Act X of 1859 was passed, having been ceded by the Raja of Sikkim to the British Government in 1835, and as the Act was applicable to the whole of Bengal, (*Sadanand Mahanti v. Nauratan Mahanti*, 16 W. R., 290; 8 B. L. R., 280) it was regarded as extending to Darjeeling, and has consequently always been administered there.

Acts VI of 1862 and IV of 1867, B. C., also prevail in Darjeeling (see notes, pp. 183, 236, Bengal Code, 3rd edition).

In the Sonthal Parganas, the Sonthal Parganas Settlement Regulation, III of 1872, as amended by Reg. III of 1886 and the Sonthal Parganas Rent Regulation, II of 1886, are in force. In this district there are a few unsettled areas in the Telliaghree pargana, which have been exempted from settlement by Government notification of the 9th December, 1879, published in the *Calcutta Gazette* of the 10th December, 1879, Part I, p. 1221. There is no rent law in force in these areas, or in certain *dearrah* lands in this district. The relations of landlord and tenant in these tracts are accordingly regulated by contract and custom. By a Government notification, No. 771 L. R., dated 20th February, 1897, published in the *Calcutta Gazette* of February 24th, 1897, Part I, p. 281, the provisions of sec. 84 of the Bengal Tenancy Act, and by another notification

No. 1338, L. R., dated 1st March, 1904, published in the *Calcutta Gazette* of the 2nd March 1904, Part I, p. 347, section 56 and clauses (2) and (3) of section 58 were extended to the Sonthal Parganas from the dates of the notifications.

The provisions of the Chota Nagpur Tenures Act (II of 1869, B. C.) prevail in the districts of the Chota Nagpur Division. Chota Nagpur. The rent law of Hazaribagh, Ranchi, Palamau and Singhbhum was to be found in Act I of 1879, B. C., (the Chota Nagpur Landlord and Tenant Procedure Act) and Act IV, B. C., of 1897, (the Chota Nagpur Commutation Act) as amended by Act V, B. C., of 1903 and Act V of 1905 : but all these acts have now been repealed by Act VI, B. C., of 1908—the Chota Nagpur Tenancy Act. In Manbhum and the Tributary Mahals Acts X of 1859, VI, B. C., of 1862, and IV, B. C., of 1867, are in force. The Chota Nagpur Tenancy Act of 1908 may be extended to the District of Manbhum or any part thereof : sec. 1 (3) Act VI, B. C., of 1908, and by Notification No. 5335 of 1908 certain portions of the said Act have already been extended to Parganas Barabhum and Patkum. See. 13 C. W. N., lx.

Under section 5, Act XIV of 1874 (the Scheduled Districts Act,) the Bengal Tenancy Act may be extended by the Local Government, with the previous sanction of the Governor-General, to any of the scheduled districts or to any part of a scheduled district. And under section 5A, the enactment, or part thereof, so extended may be included or modified, as the Local Government thinks fit. In accordance with these powers, the Local Government has issued the notification No. 721 L. R. dated the 9th February, 1903 (see *Calcutta Gazette*, 1903, Pt. I, p. 172) extending certain sections of this Act to the districts of Hazaribagh, Ranchi, Palamau and Singhbhum, subject to the restrictions and modifications therein specified. The sections so extended and the restrictions they are subject to are noted in this book under each section of the Act, and the Act as applicable to the Chota Nagpur division, except Manbhum, is printed *in extenso* in Appendix V.

Rent Law of Eastern Bengal and Assam. The province of Eastern Bengal and Assam was constituted by Government of India Notification No. 2832 of the 1st September, 1905, (see *Gazette of India*, September 2nd, 1905. Part I, p. 536) with effect from the 16th October, 1905. It comprises the districts of Backergunge, Chittagong, Dacca, Dinajpur, Faridpur, Mymensingh, Noakhali, Pabna, Bogra, Rajshahi, Rangpur, Jalpaiguri, Malda, Tipperah, Sylhet, Cachar and the districts of the Assam Valley, *viz* : Goalpara, Kamrup, Darrang, Nowgung, Sib-sagar and Lakhimpur. In all these districts, except Jalpaiguri, the Hill Tracts of Chittagong (which two latter districts are scheduled districts)

Sylhet, Cachar and the districts of the Assam Valley, this Act as amended by the amending Acts, including Act I, E. B. C., of 1908 but excepting Act I, B. C., of 1907, is in force.

In that part of the district of Jalpaiguri which was formerly a portion of the district of Rungpore, *vis*: thanas Jalpaiguri, Titaliya, Rajgunj and Boda, lying to the west of the Teesta river, and thana Patgram, which is to the east to the Teesta, Act X of 1859 with its above mentioned amending Acts has always prevailed. But in that portion of the district of Jalpaiguri which was ceded by the Bhutan Government to the British Government in 1866, and which is commonly known as the Western Duars, Act XVI of 1869, (The Bhutan Duars Act) was in force up to the 16th October, 1895. This Act excluded the ordinary Civil Courts from the cognizance of suits relating to immoveable property, revenue and rent. In the schedule to this Act there were certain rules for the assessment of the Bhutan Duars with Government revenue and for the preparation of the record-of-rights to form the basis of such assessment. But in this schedule there were no rules laid down for the guidance of the officers engaged in the administration of this tract of country in suits relating to immoveable property or rent. There was, therefore, while this Act was in force, no definite rent law for that portion of the Jalpaiguri district known as the Western Duars. Act XVI of 1869 was, however, repealed by Act VII, B. C., of 1895, which came into force on the 16th October, 1895, on which date it was published in the *Calcutta Gazette*, Part III, p. 62, and on the 25th October, 1895, by a notification published in the *Calcutta Gazette* of the 13th November, 1895, Part I A, p. 139, the Lieutenant-Governor of Bengal with the previous sanction of the Governor-General in exercise of the power conferred upon him by section 5, of the Scheduled Districts Act, extended Act X of 1859, as well as Act VI, B. C., of 1862, to that portion of the Jalpaiguri District known as the Western Duars. Act IV, B. C., of 1867 was, however, not similarly extended. It is an unimportant Act. The only section, of which the force is not spent, is section 5, which gives the Lieutenant-Governor power to appoint revenue officers to exercise the powers of the Collector of a district for the purpose of enabling them to hear appeals under Act X of 1859 and Act VI, B. C., of 1862.

Subsequently, the local Government issued the two following notifications :—

“No. 963 T. R.—5th November, 1898—In exercise of the powers conferred by sections 5 and 5A of the Scheduled Districts Act, XIV of 1874, and with the previous sanction of the Governor-General in Council the Lieutenant-Governor of Bengal is pleased to extend the Bengal Tenancy Act, VIII of

1885, to the whole of the Jalpaiguri district, except the Western Duars, with effect from the 1st of January, 1899, subject to the following restrictions and modifications, namely :—

(I) Sub-sections (2) and (3) of section 1 of the said Act shall be omitted ; and

(II) The words 'in the territories' to which the Act extends by its own operation' in sub-section (1) and the whole of sub-section (2) of section 2 of the said Act shall be omitted."

"No. 964 T. R.—5th November, 1898.—In exercise of the powers conferred by the Scheduled Districts Act, XIV of 1874, section 5 and section 5A (inserted by the Repealing and Amending Act, 1891), and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Bengal is pleased to extend the Bengal Tenancy Act, VIII of 1885, to the portion of the Jalpaiguri district, known as the Western Duars, with effect from the 1st January, 1899, subject to the following restrictions and modifications, namely :—

I.—Sub-sections (2) and (3) of section 1 of the said Bengal Tenancy Act shall be omitted.

II.—The words 'in the territories to which this Act extends by its own operation' in sub-section (1), and the whole of sub-section (2), of section 2 of the said Act shall be omitted.

III.—Nothing in the said Bengal Tenancy Act, other than the provisions of sub-section (1) of section (2), as modified by clause II of this notification, shall apply to any lands heretofore or hereafter granted or leased by Government to any person or company under an instrument in writing for the cultivation of tea or for the reclamation of land under the Arable Waste Land Rules.

IV.—Where there is anything in the said Bengal Tenancy Act which is inconsistent with any rights or obligations of a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar* or other tenant of agricultural land as defined in settlement proceedings heretofore approved by Government, or with the terms of a lease heretofore granted by Government to a *jotedar*, *chukanidar*, *dar-chukanidar*, *adhiar*, or other tenant of agricultural land, such rights, obligations, or terms shall be enforceable notwithstanding anything contained in the said Act."

These notifications have the effect of extending the Bengal Tenancy Act, subject to certain modifications, to the whole of the Jalpaiguri district, which is now part of the province of East Bengal and Assam.

It has been held that the repeal of Act XVI of 1896 (the Bhutan Duars Act) has had the effect of making the provisions of the Civil Procedure Code as applicable to the Western Duars as it is to other parts of the district (*Braja Kanta Das v. Tufaan Das*, 4 C. W. N., 287).

The application of this Act in the Chittagong Hill Tracts is barred by Reg. I of 1900. There is no special rent law in Chittagong Hill Tracts. force in these deregulationised tracts, but by s. 18 of the Regulation the Local Government is empowered to make rules to provide for the collection of rents and to prohibit, restrict or regulate the migration of cultivating raiyats in these tracts. For rules made under this section, see the *Calcutta Gazette*, 2nd May, 1900, Part I, p. 429 : also the Bengal Local Statutory Rules and Orders, 1903, vol. II, pp. 92-100.

In the district of Sylhet, the provisions of Act VIII, B. C., of 1869 are in force, having been extended to it by Government Sylhet. notification of the 24th February, 1870, published in the *Calcutta Gazette* of the 2nd March, 1870, Part I, p. 361. They continued in force in Sylhet on its incorporation with the Chief Commissionership of Assam under Government notification of the 22nd August, 1878, published in the *Government of India Gazette* of the 24th August, 1878, Part I, p. 533, and still prevail there. Act VIII, B. C., of 1869, was extended by the Chief Commissioner of Assam to the district of Goalpara. Goalpara. by Notification No. 2050J., dated the 9th May, 1892, and published in the *Government of India Gazette* of the 9th May, 1892, Part I, p. 356. In the other Assam Valley districts, *viz* : Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur, and Assam Valley in Cachar and the Hill districts, the Rent Law is in an Districts. uncertain and unsettled state. (See Gait's Assam Land Revenue Manual, pp. lv and 20). In the case of *Prasidha Narain Koer v. Man Koch*, (9 Calc., 330) it was decided that Act X of 1859 is not in force in the Assam Valley districts.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any

enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

Clause (1). Enactments repealed.—The enactments specified in schedule I as repealed are Regulations VIII of 1793 (sections 51—55, 64 and 65), XII of 1805 (section 7), V of 1812 (sections 2, 3, 4, 26 and 27), XVIII of 1812 (the preamble and sections 2 and 3) and XI of 1825 (the words “nor if annexed to a subordinate tenure” to the end of clause 1 of section 4), Act X of 1859, and Acts VI, B. C., of 1862, IV, B. C., of 1867, VIII, B. C., of 1869 and VIII, B. C., of 1879. Sections 14 and 45 of the Act are repealed by s. 2, Act I, B. C., of 1907, in the province of Bengal, and by sec. 2, Act I, E. B. C., in Eastern Bengal. The provisions of Regulation VII of 1822 are in no way repealed by this Act.

Clause (2). Orissa.—For a complete list of the portions of this Act which prevail in Orissa, see note to section 1, clause (3) pp. 4 and 5. The extension of every section in force in Orissa is also mentioned in a note to the section extended to it.

Sub-section (4). Effect of repeal of enactments.—The provisions of this clause are in accordance with the rule laid down in section 7 (1) of the General Clauses Act (X of 1897), wherein it is provided that “for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, it shall be necessary expressly to state such purpose,” and with the rule of English law which has prevailed since 1850, when it was enacted by section 5, 13 and 14 Vict., c. 21, that “where any Act repealing in whole or in part any former Act is itself repealed, such last repeal shall not revive the Act or provisions before repeal, unless words be added reviving such Act or provisions.” (See Wilberforce on “Statute Law,” p. 310, and Maxwell on the “Interpretation of Statutes,” 3rd edition, p. 585). An occupancy right acquired when Bengal Act VIII of 1869 was in force and lost before 1885 is not revived by Act VIII of 1885 which creates no new rights in favour of the tenant. *Saligram Singh v. Puluk Pandey*; 6 C. L. J. 149.

Proceedings Commenced under any former Act.—By section 6, Act I of 1868 (the General Clauses Act), now repealed by the General Clauses Act, X of 1897, it was provided that “the repeal of any Statute, Act or Regulation shall not affect anything done, or any offence committed, or any fine or penalty incurred or *any proceedings commenced* before the Repealing Act shall have come into operation.” The effect

of this section, and especially the meaning of the word "proceedings" in it, have been the subject of discussion in many cases. These cases were all reviewed in the Full Bench case of *Deb Narain Datta v. Narendra Krishna* (16 Calc., 267). In this case a decree for arrears of rent had been passed under Bengal Act VIII of 1869. Subsequently, after the Bengal Tenancy Act had come into operation, the decree-holder applied for execution, and the tenure, in respect of which the decree for arrears of rent had been made, was attached. The tenure was put up for sale, and a claim was then preferred by a third person, who objected to the execution proceeding. The Munsif rejected the claim without enquiring into it on the ground that under the provisions of section 170 of the Bengal Tenancy Act no such claim could be preferred. An application was then made to a Division Bench of the High Court to set aside the Munsif's order. The Division Bench doubted its correctness and referred the following two questions for the decision of a Full Bench—*viz*: "1. Whether in the present case, the provisions of the Bengal Tenancy Act were applicable to proceedings in execution? 2. Whether the term 'proceedings' in s. 6 of Act I of 1868, does or does not include proceedings in execution after decree?" The Full Bench answered the first of these questions in the affirmative, the second in the negative and discharged the rule. The judgment in this case was delivered by Wilson, J., who pointed out that the cases in which the Courts in this country have had to consider the effect of legislative change in the law upon proceedings instituted before the change was made, fall under one or other of three classes. "The first class consists of those in which the Courts have had to construe enactments which have altered the law, not by the mere repeal of earlier enactments, so as to bring the case under s. 6 of the General Clauses Act, but by new affirmative provisions, and in which the new enactments contain in themselves no special rule for their own interpretation. In such cases the Courts have applied the settled rule of construction ordinarily acted upon in the absence of any statutory rule inconsistent with it; and that rule is that retrospective effect is not given to an enactment so as to affect substantive rights, but that provisions affecting mere procedure are applied to pending proceedings. The second class of cases comprises those in which the enactment to be construed provides its own rule of construction by expressly or impliedly declaring that it is or is not to have retrospective operation, or the extent to which it is to affect pending proceedings. The third class of cases consists of those in which the law is changed by a mere repeal of a previously existing law, and the repealing enactment contains no special rule for its own interpretation. Such cases are governed by s. 6 of the General Clauses Act." Wilson, J., then proceeded to consider the

cases in which the meaning of the word "proceedings" in s. 6 of Act I of 1868, has been discussed and decided, and pointed out that they might be arranged in three groups. The first group consists of cases relating to appeals, in all of which, it was said, "there is a completely uniform course of decision to the effect that an appeal is a part of the same proceedings, within the meaning of s. 6 of the General Clauses Act, as the thing appealed against, and that, therefore, if the thing appealed against is a decree in a suit, the appeal is a part of the same proceeding as the earlier steps in the suit." The second group consists of cases relating to proceedings in execution of decrees. Although proceedings in execution are strictly speaking proceedings in the suit, yet, according to Wilson, J., these cases are authorities "for holding that an application for execution initiates proceedings separate from those which resulted in the decree." The third group consists of cases decided with respect to the Civil Procedure Code, and all but one are said to have been based on the terms of the Code itself and not merely on those of the General Clauses Act.

In *Maheswar Prasad Narain Singh v. Sheobaran Mahto*, (14 Calc., 621), the plaintiff sued to eject a tenant who had executed a *solehnamah* agreeing to hold the land in suit for a specified time at a specified rent and providing that the landlord was to be at liberty to enter on the lands on the expiry of the period. The suit was instituted on the 6th October, 1885, *i.e.*, before the commencement of the Tenancy Act. It was found that at the date of the *solehnamah*, the tenant had acquired a right of occupancy with respect to some of the lands in suit, and it was held that the tenant was not entitled to the benefit of section 178, (1) (b), because at the time the suit was brought there was nothing to prevent his contracting himself out of his rights. The decision in this case, which is of date prior to that of the Full Bench just cited, seems hardly in accordance with the principles laid down in it; for, from sub-section (1) of section 178, it would seem as if clause (b) affects a matter of substantive right and is intended to have retrospective effect.

In another case, *Uma Sundari Dasi v. Brajanath Bhattacharyya*, (16 Calc., 347,) in which a decree for rent had been passed under Act VIII, B. C., of 1869, but execution was not applied for until after the commencement of the operation of the Bengal Tenancy Act, it was held that execution must proceed under the provisions of the Bengal Tenancy Act, the *ratio decidendi* being that the right to execute the decree in the mode applied for, *viz*: by sale of the tenure under sections 59, 60 and 61 of Act VIII, B. C., of 1869, if it existed, was a private right or a mere right of procedure, and that, therefore, the execution proceedings must be governed by Act VIII of 1885. The decision in this case, though not

based on the provisions of section 6, Act I of 1868, is quite in accordance with the principles laid down in the Full Bench case above referred to.

There are a few other cases, relating to this subject, which it seems desirable to notice. In both *Lal Mohan Mukhurji v. Jogendra Chandra Rai*, (14 Calc., 636,) and *Uzir Ali v. Ram Kamal Shaha*, (15 Calc., 383,) the effect of the provisions of section 174 of the Bengal Tenancy Act, under which a judgment-debtor, where a tenure or holding has been sold for an arrear of rent, can on certain conditions have the sale set aside, was considered. In the former case not only had the decree been passed, but execution had been applied for before the Bengal Tenancy Act came into force, though the sale was actually held after the operation of the Act had commenced. In the latter case, execution had been applied for after the Bengal Tenancy Act had come into operation. In both cases, it was held that the judgment-debtor could not take advantage of the provisions of section 174 of the Bengal Tenancy Act, as they confer on judgment-debtors a new right, and, therefore, cannot have retrospective effect. In a third case, *Girish Chandra Basu v. Apurba Krishna Das*, (21 Calc., 940,) the question was as to whether the provisions of section 310 A, added to the Civil Procedure Code by Act V of 1894, applied to a sale held after the date on which the Act came into operation, when execution had been applied for and the sale proclamation had been issued before that date. The majority of the Bench which decided the case held, following the two above cited cases relating to section 174 of the Bengal Tenancy Act, that they were not applicable, as the provisions of section 310 A, like those of section 174 of Act VIII of 1885, conferred a new right, and did not relate merely to procedure. These three decisions were, however, all reconsidered in the Full Bench case of *Jagadanand Singh v. Amrita Lal Sarkar*, (22 Calc., 767,) in which it was held that they had all been wrongly decided, inasmuch as neither section 174 of the Bengal Tenancy Act nor section 310 A of the Civil Procedure Code confers any new right on judgment-debtors. But the Bench expressly refrained from deciding whether the order, in the case of *Lal Mohan Mukhurji v. Jogendra Chandra Rai*, (14 Calc., 636,) was or was not right with reference to the provisions of section 6 of Act I of 1868, as the question did not arise in the case of *Jagadanand Singh v. Amrita Lal Sarkar*. This case, it may be mentioned, was one under section 310 A, and, as it was pointed out, was consequently not affected by the provisions of section 6 of the General Clauses Act, as the change in the law considered in that case had been brought about, not by the repeal of any Act, but by the addition to the existing Code of Civil Procedure of a new section. But it would seem that under the rule laid down in *Deb Narain Datta v. Narendra Krishna* to the effect that an application for execu-

tion initiates a new set of proceedings, the decision in the case of *Lal Mohan Mukhurji v. Jogendra Chandra Rai* was right under section 6 of the General Clauses Act. Section 6 of Act X of 1897, which has now taken the place of section 6 of Act I of 1868, lays down that "where this Act, or any Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not.....(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, &c., as aforesaid" (*i. e.*, acquired or accrued under any enactment so repealed), "and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the repealing Act or Regulation had not been passed." This section, though somewhat differently worded from section 6 of Act I of 1868, does not appear to make any change in the law as to the effect of the repeal of an enactment upon pending proceedings. The propositions laid down by Wilson, J., on the point in *Deb Nurain Datta v. Narendra Krishna* would therefore, seem to hold equally good under the present, as under the former General Clauses Act.

3. In this Act, unless there is
 Definitions. something repugnant in the subject or
 context :—

(I) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khas mahals and revenue-free lands not entered in any register.

The whole of this section has been extended to Orissa, (Not., Sept. 10th, 1891). All the definitions contained in sub-section (1) and the seventeen succeeding sub-sections consequently apply there. This sub-section was also extended to the Chota Nagpur Division, except the district of Manbhum, but for "Collector," "Deputy Commissioner," must be read. (Not., Feb. 9th. 1903). The Chota Nagpur Division however has at present a separate Tenancy Act of its own: Act VI, B. C., of 1908, except the district of Manbhum and Parganas Barabhum and Patkum in which certain portions of the said act have been extended. See 13, C. W. N. lx.

Definitions of "Estate."—Other definitions of "estate" are to be found in sec. I, Act VII, B. C., of 1868 (an Act to amend the law for the

recovery of arrears of land-revenue) and in section 3 (2) of Act VII, B. C. of 1876, (the Land Registration Act, 1876). According to the former Act, "estate" means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register known as the general register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of Act XI of 1859, have been opened." According to the Land Registration Act, 1876, as amended by Act II, B. C., of 1906, 'estate' includes (a) any land subject to the payment of land-revenue, either immediately or prospectively, for the discharge of which a separate engagement has been entered into with Government; (b) any land which is entered on the revenue-roll as separately assessed with land revenue (whether the amount of such assessment be payable immediately or prospectively) although no engagement has been entered into with Government for the amount of revenue so separately assessed upon it as a whole; (c) any land being the property of Government of which the Board shall have directed the separate entry on the general register hereinafter mentioned, or on any other register prescribed for the purpose by rule made under this Act." The definition of "estate" given in section 3 (1) of this Act differs from those cited above, inasmuch as it includes revenue-free lands which are not "estates" according to either Act VII, B. C., of 1868 or Act VII, B. C., of 1876. In the latter Act revenue-free lands come under the head of "Revenue-free property," which according to section 3, sub-sec. (10), "means any land not subject to the payment of land revenue which is included under one entry in any part of the general register of revenue-free lands." "Estate" in this Act also includes unregistered *lakheraj* lands and Government *khas mahals*. When an estate is recorded under a distinct number on the *tauzih* or revenue roll of the Collectorate with a separate revenue assessed upon it, the mere fact of its comprising undivided shares in certain villages does not prevent its being an entire estate (*Preonath Mitra v. Kiran Chandra Rai*, 27 Calc., 290; *Kamal Kumari Chaudhuri v. Kiran Chandra Rai*, 2 C. W. N., 229).

Estates in Bengal.—A revenue-paying estate in Bengal is generally known as a *zamindari* and may be either permanently or temporarily settled. Many so called "tenures" may come within the definition of "estate" given in this Act, e. g., *aima* (from the plural of *imam*) or *altamgha* (from *al*, red, and *tamgha*, a stamp) grants, *jagirs*, (from *ja*, a place, and *gir*, taking or occupying), *madadmash* grants (from *madud*, assistance, and *mash*, livelihood,) *mukaddami* interest (from *mukoddam*, the head-man of a village) and *taluks* (from *alak*, to suspend from.) But they may be "tenures." *Taluks* are of two kinds, *huzuri* (i. e., paying to the

huzur or head-quarter treasury) or *kharija* (i. e., separated) *taluks*, and *shikni* (from *shikni*, the belly), *maskuri* (or "specified," because they were specified in the *zamindar's* engagements,) or *shamili* (from *shamil*, extending to) *taluks*. The *huzuri* or *kharija taluks* only are estates. *Taluks* of the latter class are tenures. Some *ghatwali* tenures, on which revenue is payable directly to Government are also "estates."

Noabad taluks in Chittagong are not estates.—In years past there was much contention as to whether the Noabad taluks of the Chittagong district came within the definition of "estate" or not. This controversy was set at rest, so far as the executive are concerned, by the orders of the Government of India conveyed in its letter, No. 1792,173 of the 24th July, 1893, to the address of the Secretary to the Government of Bengal, in which it was directed that the Noabad taluks in Chittagong were to be treated as "tenures" and not as "estates" within the meaning of Act VIII of 1885. According to these instructions, then, the Noabad talukdars are "tenure-holders," and the *khas mahals* to which they are subordinate are "estates", of which the Government is "proprietor." In the leading case of *Prasanna Kumar Rai v. Secretary of State*, (26 Calc., 792 ; 3 C. W. N., 695,) it was not contended that the Noabad taluk in question was anything but a tenure.

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., February 9th, 1903) : but the present law there, is Act VI B. C., 1908, of which certain portions have been extended to Parganas Barabhum and Patkum in the District of Manbhum.

Effect of acquisition by Government of interest of proprietor.—When the paramount title of the State carrying with it the right to receive revenue and the proprietary right to receive rent unite in Government, the proprietary interest becomes merged in the paramount title ; and rent, in such cases, becomes revenue. (The Bengal Settlement Manual, 1908, Part I, Chap. I, rule 4, p. 1 : see also section 101 (2) Expln. 1).

(3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

Extended to the Chota Nagput Division, except the district of Manbhum (Not., February 9th, 1903) : but the present law there, is contained in Act VI, B. C., 1908.

"Land" not defined.—There is no definition of the term "land" in this Act. The Rent Commission in their Bill (sec. 3) proposed to define land as follows : "Land includes woods and water thereupon ; when applied to land cultivated or held by a raiyat, it means land used or intended to be used for agricultural or horticultural purposes, or the like. In Chap. XVIII " (a chapter relating to procedure in suits for recovery of arrears of rent and certain other suits), "it means (a) tenures, under-tenures, and holdings ; (b) land used or let to be used for agriculture, horticulture, pasture, or other similar purpose, or for dwelling-houses, manufactories, or other similar buildings ; and (c) rights of pasturage, forest rights, fisheries, and the like. *Explanation*—*Bastu* or homestead land is land used for agricultural purposes when it is occupied by a raiyat, and together with the land cultivated by such raiyat forms a single holding." This suggestion, which would have obviated all ambiguity, was not adopted, and there is no definition of the term in this or any other legislative enactment, by means of which its meaning in this sub-section can be determined. In the course of the debates in Council on the provisions of the Bill, the Maharaja of Darbhanga proposed that the provisions of the Act should be restricted to "land which is the subject of agricultural or horticultural cultivation, or is used for purposes incidental thereto." But his proposed amendment to this effect was not accepted. The Hon'ble Mr. Reynolds in his remarks on the Maharaja of Darbhanga's amendment observed that, if it were carried, "it would have the effect of excluding from the operation of the Bill not merely all waste lands but all the lands not actually under cultivation at the time the question might be raised. It would leave it open to a landlord to contend that a raiyat's right of occupancy did not extend to those lands of his holding which were not actually under cultivation at the time. It is in my opinion better for the Council to leave the question to be decided by the Courts."¹ The Hon'ble Sir Steuart Bayley said : "The Hon'ble Mr. Reynolds has pointed out that his amendment will have the effect of limiting the raiyat's right of occupancy, as he would thereby lose the right as to all waste lands and lands not used for agricultural and horticultural purposes. I may point out also that the effect would be to remove from the scope of the Bill, which deals with tenures generally, all such parts of a tenure, as may be used momentarily for other purposes than agriculture and horticulture. It is much safer to

(1) Selections from papers relating to the Bengal Tenancy Act, 1885, p 482.

trust to the Courts to apply the law to these cases.”(1) It is, therefore, evident that the omission of any definition of “land” in this Act is intentional. The question of determining to what classes of land the Act should be applicable was felt to be a difficult one, and so it was left to the Courts to overcome the difficulties involved in its solution.

The subject of homestead land is, however, dealt with in section 182 of this Act, which provides that this Act applies to homestead land when held by a raiyat, and that even when homestead land is held by a raiyat otherwise than as part of his holding as a raiyat, the provisions of this Act are still applicable, unless there be a custom or usage to the contrary. But the Act does not expressly apply to homestead land not held by a raiyat ; so the position of non-cultivating residents of a village is left uncertain, and it would seem that their relations with their landlords in respect of their homestead lands must be determined by the provisions of the Indian Contract Act (IX of 1872)

Application of the old rent law to non-agricultural land.—

On this subject the Rent Law Commission in their report (Vol. I, p. 9, para 11) say : “ Certain portions of Acts X of 1859, and VIII, B. C., of 1869, have been construed to apply only to land used for agricultural or horticultural purposes, or the like. Whether the remaining portions are limited in their application is a broad question which has never been settled. While some have contended that the provisions of those Acts as to the recovery of arrears of rent apply to the rent of any land, irrespective of the purpose for which it is used, it has never been doubted that the rents of tenures and under-tenures are recoverable under these Acts, and these commonly include much more than land used for agricultural or horticultural purposes.”

Mr. Field in his *Rent Law Digest* (see p. 3, note) observes : “ It has been repeatedly decided, and is now settled law, that the grounds-of-enhancement and right-of-occupancy provisions contained in the present law have no application to land not used for agricultural or horticultural purposes. Though the broader point seems never to have been settled, it is understood that the general provisions of Acts X of 1859 and VIII (B. C.) of 1869 were intended to apply only (so far as concerns the actual occupant) to land used or originally let for these particular purposes. See in favour of this view 3 *Agra Rep.*, 52 ; 8 *W. R.*, 250 ; 9 *B. L. R.*, 105 *note*, 108 *note*, 109 *note*, 120 ; 23 *W. R.*, 61. It has, however, been contended by some authorities that the provisions of these Acts as to the recovery of arrears of rents apply to the rent of any land, irrespective of

(1) Selections from papers relating to the Bengal Tenancy Act, 1885, p. 482.

the purpose for which it is used.—See 9 B. L. R., 111, 116 *note*, 124 ; 1 Ind. Jur. N. S., 428 ; W. R., Sp. No., Jan.—July, 1864, p. 78 (land used for a *hat*). It has been held in several cases that Act X applies where rent is sought to be recovered merely for 'the land upon which houses stand—see Board's rulings, 47 ; 8 W. R., 90 ; 2 W. R., Act X, 9 : but otherwise, where the claim includes the rent of the house as well as of the land, more especially if the former item be the more important—see Board's rulings, 47 ; 9 B. L. R., 109 *note*, 116 *note* ; Marsh., 401."

In the following cases it was held that the grounds-of-enhancement provisions of the old rent Acts were inapplicable to land not used for agricultural or horticultural purposes ; *Surnomayi v. Blumhardt*, 9 W. R., 552 ; *Kali Mohan Chatterji v. Kali Krishna Rai*, 11 W. R., 183 ; 2 B. L. R., App., 39 ; *Khairudin Ahmad v. Abdul Baki*, 11 W. R., 410 ; 9 B. L. R., 103 *note* ; *Church v. Ram Tanu Shaha*, 11 W. R., 547 ; 9 B. L. R., 105 *note* ; *Naimudin Jeardar v. Scott Moncrieff*, 3 B. L. R., 183 ; *Durga Sundari Dasi v. Umdatunnissa*, 17 W. R., 151 ; *Jai Kishor Chaudhrain v. Nahi Baksh*, 17 W. R., 178 ; *Madan Mohan Biswas v. Stalkart*, 17 W. R., 441 ; 9 B. L. R., 97 ; *Durga Sundari Dasi v. Umdatunnissa*, 18 W. R., 235 ; 9 B. L. R., 101 ; and *Purna Chandru Rai v. Sadat Ali*, 2 C. L. R., 31 ; while in *Mahar Ali Khan v. Ram Ratan Sen*, 21 W. R., 400, it was said that the words "cultivated or held" in s. 6, Act VIII (B. C.) of 1869 have the effect of excluding lands occupied exclusively by buildings from the right of occupancy there declared. See also *Adaito Charan De v. Peter Das*, (17 W. R., 383). The leading cases as to the applicability of the former rent Acts to agricultural or horticultural land only are *Khalat Chandru Ghosh v. Minto* (1 Ind. Jur., N. S., 426) and *Kali Krishna Biswas v. Janki*, (8 W. R., 250). In the former of these cases, Phear, J., observed that "the subject of tenure throughout Act X of 1859, which is designated as land, is merely that which the ordinary ryots or occupants of the soil possess and hold under their zamindar, *viz.*, the surface of the earth in a condition such that, by the aid of natural agencies, it can be made use of for the purpose of vegetable or animal reproduction." In the latter case, the same learned Judge said :—"In my judgment the occupation intended to be protected by that section (sec. 6, Act X of 1859,) is occupation of land considered as the subject of agricultural or horticultural cultivation and used for purposes incidental thereto, such as for the site of the homestead, the ryot or malli's dwelling house and so on. I do not think that it includes occupation, the main object of which is the dwelling house itself, and where the cultivation of the soil, if any there be, is entirely subordinate to that." Besides the cases cited by Mr. Field, the following support this view : *Bipra*

Das De v. Wollen, 1 W. R., 223; *Mahtab Chand v. Makund Ballabh Basu*, 9 B. L. R., App. 13; *Piari v. Nakur Kurmakar*, 19 W. R., 308; and *Gokhul Chand Chaturji v. Mosahru Kandu*, 21 W. R., 5, which are authorities for the proposition that the rent law has no application to land leased and used for building purposes. This was pointed out by Phear, J., in *Khulal Chandra Ghosh v. Minto*, in which he remarked: "I believe it has been held constantly that land covered entirely with houses and buildings not devoted to agricultural objects does not come within the application of the Act." In *Furlong v. Johari Lal*, (Hay's Reports, 1862, 453), it was held that the rent law did not apply to land leased for the erection of salt golahs for the use of which the lessee levied a cess upon the persons using them. In *Garland v. Rai Mohan Hazrah*, (1 W. R., 15,) it was determined that Act X of 1859 did not apply to a suit to recover rent due under a lease of tolls arising from a canal or river navigation, and in *Harish Chandra Kund v. Gopal Barui*, (3 W. R., Act X, 158,) it was similarly decided that a suit did not lie under the Act for rent due for the right to come upon land and vend *pan* there on *hat* days. In *Shalgram v. Kabiran*, (3 B. L. R., A. C., 61; 11 W. R., 400,) it was held that a suit for arrears of rent payable for certain land for a right to levy a tax upon persons employed in cutting stone on the land was not cognizable by a Revenue Court. It was pointed out in this case that the rent was indivisible, and that it could not be said how much was reserved on the land, and how much on the right to quarry, and that the small quantity of land leased was not taken for agricultural purposes but for purposes subsidiary and necessary to the main purpose of the lease, namely, quarrying the stone, the land being required for the erection of the huts of the stone-cutters. In *Hari Mohan Sarkar v. Scott Moncrieff*, (9 B. L. R., App., 14,) it was decided that a suit for the rent of land, where the rent came from *arhats*, *ghats*, and *bazars* situated upon it, as well as from the land, would not lie in the Revenue Court; while in *Savi v. Ishar Chandra Mandal*, (20 W. R., 146,) it was held that a suit for rent derivable by a lessor from tolls collected by the lessee from persons resorting to a *hat* was not cognizable under Act VIII (B. C.) of 1869. The ruling in this case is inconsistent with that in the earlier case of *Gaitri v. Thakur Das*, (W. R., Sp. No., Act X., 78), and also with the later case of *Bangshodhar Biswas v. Madhu Mahaldar*, (21 W. R., 383.) In *Judu Nath Ghosh v. Schoene Kilburn & Co.*, (9 Calc., 671.) in which certain land had been let under a *dar-maurasi mukarari* lease, it was said that, the lease not being one of agricultural land, the provisions of the rent Act had no application. The case of *Watson & Co. v. Govind Chandra Mazumdar*. (W. R., Sp. No., Act X, 46,) was one of the chief authorities for the more extended application

which was sometimes endeavoured to be given to the former rent law. In this case it was said : "The provisions of the Act generally contemplate tenants who cultivate land or gather its natural or artificial products ; but the class of cases which by the 4th clause of section 23 (of Act X of 1859) is made cognizable by a Collector of land revenue is described in terms wide enough to extend his jurisdiction in suits for rent to cases of tenancies which are not strictly agricultural tenancies. He has jurisdiction in all suits for arrears of rent due on account of land, either *kherajee* or *lakheraj*, or on account of rights of pasturage, forest rights, fisheries, or the like. For whatever purposes the surface of the land may be used, if the subject of the lease is land, and rent is due on account of the land, a suit for arrears must be brought in the Collector's Court." See also *Nasur Ali v. Sadat Ali*, (W. R., Sp. No., 1864, Act X, 102.) The late Mr. Justice Dwarkanath Mitter strenuously maintained this view in the cases of *In re Bramamayi*, 9 B. L. R., 109 ; *Durga Sundari Dasi v. Umdatunnissa*, 17 W. R., 151 ; 9 B. L. R., 101 ; and *Brajanath Kundu v. Lowther*, 9 B. L. R., 121 ; 17 W. R., 183 ; but he was overruled in the Letters Patent Appeal in *Durga Sundari Dasi v. Umdatunnissa*, (18 W. R., 235 ; 9 B. L. R., 119.)

In *Chandessari v. Ghinah Pandey*, (24 W. R., 152,) the rule was laid down that when the principal subject of the entire occupation was *bastu* (homestead) land, the residue, if any, of the holding being merely subordinate, the rent law was not applicable ; but when the principal subject of the entire occupation was agricultural land, the building or buildings being mere accessories thereto, the rent law was applicable. The same principle underlies the decisions in *Tarini Prasad Ghosh v. Bengal Indigo Co.*, (2 W. R., Act X, 9,) and *Matangini Dasi v. Haradhan Das*, (5 W. R., Act X, 60). In the former case it was ruled that a suit for the rent of land let for the purposes of a factory, including the dwelling-house of the proprietor of the factory, would lie in the Revenue Court, as the rent issued out of, and was reserved in respect of the land alone, and that the case was distinguishable from that of *Aditya Chandra Pal v. Kamla Kant Pal*, Marsh, 401, in which it was held that a suit for arrears of rent due on account of an indigo factory would not lie under Act X of 1859, as in that case the rent was reserved not for the land alone, but for the factory and the business and profits of the contracts connected therewith. In *Matangini Dasi v. Haradhan Das*, it was said that a suit under Act X of 1859 lay, as the land was the substantial thing let out, and the existence of a hut upon the land as an appendage was a mere matter of accident. A suit does not lie under Act X of 1859 for arrears of rent of land leased for mining purposes and for purposes of building, making roads, and so forth (*Rooke v. Bengal Coal Co.*, 28 Calc., 485 ; 5 C. W. N.,

840), or for arrears of rent of a tank not part of an agricultural building, but used for rearing and preserving fish (*Mahananda Chakravarti v. Mangala Keotani*, 31 Calc., 937.)

Application of the present Act to non-agricultural land.—

So far there have been only two cases under the present Act in which it has been endeavoured to make it applicable to non-agricultural land, and the attempts were not successful. The first case was that of the *Raniganj Coal Association v. Judu Nath Ghosh*, (19 Calc., 489,) which was a suit for arrears of rent due under a *dur-maurasi mukavari* lease, in fact the same lease as sued on in the case of *Jadu Nath Ghosh v. Schoene Kilburn & Co.*, (9 Calc., 671.) It was observed with regard to this lease that it had not been granted for agricultural or horticultural purposes, but for building purposes and for the establishment of a coal depôt, and therefore, that the land comprised in the lease did not come within the purview of the Tenancy Act. In the second case, *Umrao Bibi v. Mahomed Rojabi*, (27 Calc., 205), the subject of dispute was some plots of land within the limits of the Dacca Municipality, one of which was used as a *san sonda* or place where grass for thatching was grown, and others were cultivated with kitchen vegetables. It was held that, as the land was not let for agricultural or horticultural purposes, the Bengal Tenancy Act did not apply. But see *Hassan Ali v. Gobind Lal Basak*, 9 C. W. N., 141. It was held that if land outside the town of Calcutta were used for agricultural or horticultural purposes, the Act would apply, even if it were within its municipal boundaries, as defined by Bengal Act II of 1888 (*Biraj Mohini Dasi v. Gopeswar Mallik*, 27 Calc., 202); but this ruling has been set aside by the Explanation added to sec. 1 (3) by Act I, B. C., of 1907.

Waste land.—Unsettled and unoccupied waste land, not being the property of any private owner, must be held to belong to the State.

(*Prasanno Kumar Rai v. Secretary of State*, 26 Calc., 803; 3 C. W. N., 725).

How a tenancy is constituted.—According to Mr. Field in his "Rent Law Digest," art 4, p. 5, the relation of landlord and tenant arises : "(1) where it has been created by a contract valid according to the law in force at the time of executing such contract : (2) where it is reasonably implied from the acts of the parties : and (3) where it has been created or continued by operation of law." The most common instance of an implied contract of tenancy in Bengal is when a cultivator occupies the land of a landlord without his express consent or that of his agents and is allowed to remain in occupation of the land. Strictly speaking, such person is in the position of a trespasser, but if he is allowed to remain and cultivate the land, a contract of tenancy may be

implied. If rent is accepted from him, or if he is sued for rent, a tenancy is clearly established. (*Mahomed Azmal v. Chandi Lal*, 7 W. R., 259; *Gadadhar Banerji v. Khetra Mohun*, 7 W. R., 460; *Chaitan Singh v. Sadhari Monim*, 5 C. L. J., 62). In *Nityanand Ghosh v. Krishna Kishor*, (W. R, Sp. No. Act X, 82,) it has been said: "We think that though by the law of landlord and tenant, as applied in England, a person who takes and cultivates the land of another (there being no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator) would not be allowed to be regarded as a tenant, but treated as a mere trespasser, the peculiar circumstances of this country preclude the applicability of the technical doctrine of the English law of landlord and tenant to such a case. Here it is a very usual thing for a man to squat on a piece of land, or to take into cultivation an unoccupied or waste piece of land. Tenancy in a great many districts in Bengal commences in this way, and where it does so commence, it is presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus, the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so, although he may never have expressly acknowledged the landlord's right or entered into any express contract with him for the payment of rent. If he chooses to cultivate the *samindar's* lands and the *samindar* lets him, there is an implied contract between them, creating a relationship of landlord and tenant." Receipt of premium and rent have been held to create a tenancy which cannot be disturbed by a subsequent registered lease: *Ismail v. Ali Mahomed*, 13 C. W. notes CIV. In another case it has been said that parties in possession make themselves tenants by use and occupation of the land (*Lalan Mani v. Sonamani Debi*, 22 W. R., 334; see also *Lakhi Kant Das Chaudhuri v. Samirudin Laskhur*, 21 W. R., 208; 13 B. L. R., 243); and in *Sarnomoyi v. Dinonath Gir*, (9 Calc., 908,) it was held on the authority of these two cases that, though the defendants were trespassers, as the plaintiff was willing to waive the trespass, a decree might be given for use and occupation. In the case of *Azim v. Ram Lall Shaha*, (25 Calc., 324) these cases were commented on and followed, and it was observed that the principle of law enunciated in them has now been embodied in section 157 of the present Act. *Utbandi* tenancies, (for an account of which see note to sec. 180) are instances of tenancies arising by implied contract. But a mere demand for rent is not sufficient to create the relation of landlord and tenant. It is at most the offer of a tenancy (*Deo Nandan Prasad v. Meghu Mahton*, 11 C. W.

N., 225 ; 34 Calc., 57). And where the plaintiff and the defendants, being some of the co-owners of a *zamindari*, purchased certain holdings under the *zamindar* and were in occupation of separate portions of them, it was held that the defendants, in the absence of any agreement between themselves and the plaintiff to pay him rent, were not the plaintiff's tenants in respect of the lands actually occupied by them, or liable to pay him rent (*Girindra Chandra Pal v. Srinath Pal*, 32 Calc., 567 ; 3 C. L. J., 141.)

In many cases it has been held that it is not necessary that the landlord inducing the tenant into the land should have a good title to it, and notwithstanding his ejectment from it the tenancy continues ; the tenant becomes by implication the tenant of the new landlord. (*Ghulam Panya v. Harish Chandra Ghosh*, 17 W. R., 552 ; *Amir Hossain v. Sheo Sakai*, 19 W. R., 338 ; *Zulfun v. Rudhika Prasanno Chandra*, 3 Calc., 560 ; 1 C. L. R., 388 ; *Mahira Chandra Shaha v. Hazari Paramanik*, 17 Calc., 45 ; *Binad Lal Prakash v. Kalu Paramanik*, 20 Calc., 708). But this rule apparently applies only in the case of raiyats and not in that of tenure-holders or when the provisions of sec. 107 of the Transfer of Property Act (IV of 1882) are applicable, (*Sheo Charan Lal v. Prabhu Dayal*, 1 C. W. N., 142). This rule does not apply to *chaukidari chakran* land, which has been resumed and made over to the *zamindar* (*Janabali v. Rakibuddin Mullik*, 9 C. W. N., 571 ; 1 C. L. J., 303) ; and only when the tenant has entered upon the land and held under a *de facto* proprietor, who is not the real owner, in good faith (*Piari Mohan Mandal v. Rudhika-Mohan Hazra*, 8 C. W. N., 315 ; 5 C. L. J., 9 ; *Narain Upendra Bhattacharya v. Protap Chandra Pradhan*, 8 C. W. N., 320).

Tenancies are created by operation of law when in resumption proceedings a decree for resumption is given (*Haro Prasad Chaudhuri v. Shama Prasad Rai Chaudhuri*, 6 W. R., Act X, 107, and see *contra*, *Bir Chandra Manikya v. Raj Mohan Goswami*, 16 Calc., 449), and when a Civil Court passes a decree declaring the right of a *zamindar* to assess rent on land (*Saudamini Devi v. Sarup Chandra Rai*, 8 B. L. R., App. 82 ; 17 W. R., 363 ; *Shama Sundari Devi v. Sital Khan*, 8 B. L. R., App. 85 ; 15 W. R., 474 ; *Madhusudan Sagori v. Nipal Khan*, 8 B. L. R., App. 87 ; 15 W. R., 440 ; *Rohini Nundan Gosain v. Ratneswar Kundu*, 8 B. L. R., App. 89 ; 15 W. R., 345), or to obtain rent from the defendants, (*Nobo Krishna Mukhurji v. Kalachand Mukhurji*, 15 W. R., 438 ; *Rango Lal Mandal v. Abdul Ghafur*, 3 C. L. R., 119 ; 4 Calc., 314). In the case of *Piari Mohan Mukhurji v. Kamaris Chandra Sarkar*, (19 Calc., 790), it has been held that the heirs of an occupancy-raiyat dying intestate are liable to pay rent, whether they occupy the land or not, until they surrender the holding in the manner prescribed by

section 86 of the Tenancy Act. This would therefore seem to be another instance of a tenancy being created between parties by operation of the law,—in this instance, by the law of inheritance.

Payment of rent not necessary to establish or maintain a tenancy.—It is the liability to pay rent which establishes the relation of landlord and tenant. The actual payment of rent is not necessary to constitute or maintain that relation, and mere non-payment does not determine it. (*Trailokhya Tarini Dasi v. Mohima Chandra Matak*, 7 W. R., 400; *Rango Lal Mandal v. Abdul Ghafur*, 4 Calc., 314; 3 C. L. R., 119; *Poresh Narain Rai v. Kashi Chandra Tulukdar*, 4 Calc., 661; *Masyatulla v. Nurzahan*, 9 Calc., 808; 12 C. L. R., 389; *Tiruchurna Perumal v. Sanguvien*, 3 Mad., 118; *Premsookh Das v. Bhupia*, 2 All., 517; *Dadoba v. Krishna*, 7 Bom., 34; *Rambhat v. Bababhat*, 18 Bom., 250; *Mazhar Rai v. Rungat Singh*, 18 All., 290). So, the mere discontinuance of payment of rent does not constitute dispossession within the meaning of sec. 9 of the Specific Relief Act, (*Tarini Mohan Mazumdar v. Ganga Prasad Chakravartti*, 14 Calc., 649). Nor does it operate to create in favour of the lessee a title by adverse possession during the term of the lease: (*Madan Mohan Gossain v. Rameswar Malia*: 7 C. L. J., 651.) But non-payment of rent with abandonment of the subject of the tenancy, or the passing of a decree for ejectment against the tenant, does put an end to the relation of landlord and tenant. See note to sec. 87.

(4) “Landlord” means a person immediately under whom a tenant holds, and includes the Government.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., February 9th, 1903): but the present law there is Act VI, B. C., 1908.

Any person to whom rent is payable is a “landlord” in relation to the person who pays rent to him, though he may himself be a tenant in relation to some third person. The term “landlord,” therefore, presents no difficulty. But great contention has been raised as to the meaning of the expression “joint landlords” used in sec. 188. Do these words apply to co-sharers who are in separate collection of rent from the tenant, or are they only applicable to co-sharers who are in joint collection of the rent? The subject is discussed in the notes to sec. 188.

The person to whom the land for which rent is claimed as well as the arrears due are transferred is a landlord within the meaning of the Bengal Tenancy Act: *Sashi Kumar Mirbahar v. Sitanath Bunerjee*, 7 C. L. J., 425.

If a tenant while sticking to his character as lessee under one person takes a lease of the same property from a third person to avoid dispute and secure possession, he cannot he said to have renounced his original lease : *Farman Bibi v. Tasha Haddal*, 7 C. L. J., 648 ; 12 C. W. N., 587.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII, [Chapter XIV] and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

The word and figures "Chapter XIV" in brackets have been inserted in the sub-section by s. 3, Act I, B. C., of 1907, for the province of Bengal and by Sec. 3, Act I, E. B. C., of 1908, for the province of Eastern Bengal and Assam, for the purpose of enabling a tenure or holding to pass at a sale held in execution of a decree for cesses and money legally recoverable as if it was rent.

Rent.—To constitute rent the payment must be (1) either money or produce ; (2) lawful ; (3) on account of the use or occupation of land held by tenant ; and (4) payable to the landlord.

A number of mangoes to be delivered yearly is, therefore, clearly rent : (*Nabo Tarini Dasi v. Gray*, 11 W. R., 7), and a suit for the landlord's share of the produce, or its money value, is a suit for rent (*Bhubo Sundari v. Jynal Abdin*, 8 W. R., 393 ; *Lachman Prasad v. Hulush Mahtun*, 11 W. R., 151 ; 2 B. L. R., App., 17 ; *Jumna Das v. Gausi Miah*, 21 W. R., 124 ; *Mallik Amanat Ali v. Aklu Pasi*, 25 W. R., 140 ; *Tazudin Khan v. Ram Prosad Bhagat*, 1 All., 217 ; *Shoma Mehta v. Rajani Biswas*, 1 C. W. N., 55). The money payable in respect of forest rights is not rent within the meaning of sec. 3, cl. 5 of the Act : *Abdulla Sarkar v. Asrafali Mandal*, 7 C. L. J., 152. Services rendered for the use and occupation of land are not rent according to the definition in this clause, though a service tenure-holder comes within the definition of "tenant" in sub-sec. (3). The incidents of service tenures are expressly excluded from the operation of this Act (sec. 181).

Profits—realized by ijardars of a *mela* held on agricultural lands, from stall-holders has been held not to be rent : (*The Secretary of Stat v. Karunakant Chowdhury*, 35 Cal., 82 F. B ; 11 C. W. N., 1053.)

Abwabs—or impositions on tenants over and above the actual rent, are not rent and cannot be recovered as such, for they are not lawfully payable (see sec. 74.).

Malikana—is not rent and sec. 78 of the Land Registration Act is no bar to a claim for it: (*Syed Shah Najamuddin Hyder v. S. Zahid Hossein*, 8 C. L. J., 300.)

Collections of portions of the proceeds of sales from persons exposing their goods for sale in a *hat* and due under a farming lease are rent, because they are payable for the use of the land (*Bangshodhar Biswas v. Madho Mahaldar*, 21 W. R., 383; cf. *Gaitri Debi v. Thakur Das*, W. R., Sp. No., Act X, 78, and *contra*, *Savi v. Ishar Chandra Mandal*, 20 W. R., 146.) See also, *The Secretary of State v. Karunakant* 35 Cal., 82 F. B.) For the same reason, a sum payable annually by a mortgagee in possession under a *Zur-i-peshgi* lease executed by him in favour of the mortgagor is rent (*Bissorup Dutta v. Binod Ram Sen*, W. R., Sp. No., Act X, 93). But damages for the destruction of trees (*Nabo Tarini Dasi v. Gray*, 11 W. R., 7) and goats, straw and other articles due under a separate agreement unconnected with the question of rent (*Bhubo Sundari v. Jynal Abdin*, 8 W. R., 393) are not rent, because not due for the use and occupation of land. So, also, money payable by a lessee in consideration of a lease granted, whether called *nazar* or *salami*, (*Dinonath Mukhurji v. Debnath Mallik*, 13 W. R., 307). Damages for the use and occupation of land are not rent, (*Bluban Mohan Basu v. Chandra Nath Banurji*, 17 W. R., 69; *Kishen Gopal Muwar v. Barnes*, 2 Calc., 374; *Kali Krishna Tagore v. Izzatunnissa*, 1 C. W. N., 1xxviii), because not payable by a tenant. Similarly, when on the sale of *zamindari*, the conditions of sale stipulated for the payment of a small pittance, styled *dasturat*, by the purchaser as subsistence of the former proprietor, this was held not to be rent, because the relation of landlord and tenant did not exist between the parties (*Ram Charan Banurji v. Torita Charan Pal*, 18 W. R., 343).

Payments under varat or assignment :—Finally, a payment to be rent must be payable to the landlord. Accordingly, in *Ratnessar Biswas v. Harish Chandra Basu*, (11 Calc., 221), it was decided that a sum of money payable by a tenant, not to his immediate landlord but to a third person, was not rent. But in *Mahabat Ali v. Mahomed Faizullah*, (2 C. W. N., 455), it was subsequently ruled that a sum payable by a *patnidar* on behalf of the *zamidar* to the Collector as cesses, and another payable to a third person as expenses for the maintenance of a *masjid*, were sums payable for the use and occupation of land, and were, therefore, rent.

The conflict of decision between these two cases was ultimately settled by a Full Bench in *Basanta Kumari Debia v. Asutosh Chakravartti*,

(27 Calc., 67 ; 4 C. W. N., 3) in which it was decided that a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages. In this case the assignee was not a party to the assignment and had not accepted it, which was regarded as showing that "in the contemplation of the parties the money did not cease to be a part of the rent or recoverable as such."

So, where a lease had been executed by the plaintiffs in favour of the defendant at a fixed annual rent, and the defendant under instruction from the plaintiffs paid from time to time Government revenue, cesses expenses of litigation, &c, on their behalf and used to set off those sums against the rent due to them under the lease, it was held that on the expiry of the lease, the plaintiffs could not sue the defendant for an account, but only for rent, if any was still due (*Bhekdhari Lal v. Badshingh Duaharia*, 27 Calc., 663.) Again, a lease provided that a certain sum was payable by the tenant direct to the landlord as *malikana*, and certain other sums were payable by the tenant for Government revenue and other demands, which the landlord was himself bound to pay ; *held*, that the latter sums were payable for the use and occupation of the land held by the tenant and might have been made payable to the landlord direct, although for convenience it was arranged that the tenant should pay them for the landlord and came within the definition of rent (*Jnanada Sundari v. Atul Chandra Chakravarti*, 32 Calc., 972). A took a lease of certain *manzas* from B in *dar-patni* and *se-patni* and covenanted to pay annually Rs. 3,191, to the superior landlords of B direct and Rs. 1,800 to B. A was to take receipts from the superior landlords, make them over to B and take receipts from the latter. The whole amount of Rs. 4,991 was described in the lease as *annual rent fixed* and in certain eventualities arising out of non-payment by A to the superior landlords, B was authorized to realise the amount from A by bringing a suit for *arrears of rent* ; *held*, upon a construction of the lease, that a suit brought by B for realisation from A of the amount which the latter failed to pay to the superior landlords under the terms of the lease, was, for the purpose of limitation, one not for rent, but for damages for breach of covenant (*Hemendra Nath Mukhurji v. Kumar Nath Rai*, 9 C. W. N., 96 ; 32 Calc., 169). Where by a *patni* lease the annual *juma* of the tenure was fixed at Rs. 6000 and besides this rent, the *patnidar* undertook to deposit into the Collectorate the Government revenue fixed for the share of the estate granted in *patni*, and payable by the lessor, *kist* by *kist*, failing which the *patni* lease was to be cancelled, and the landlord was to take *khas* possession ; *held*, by their lordships of the Privy Council that the payment by the *patnidar* of the

Government revenue, though no doubt part of the consideration to be rendered by the lessee for the enjoyment of the tenure, was not money payable to the landlord, and was therefore not rent, or recoverable as such under the provisions of the *Putni Regulation* (*Jotindro Mohan Tagore v. Jurao Kumari*, 33 Calc., 140 ; 3 C. L. J., 7 ; 10 C. W. N., 201.)

In *Mansar v. Loknath Rai*, (4 C. W. N., 10), it was held that a suit brought for rent by an assignee of a landlord against a tenant was still a suit for rent, and was, therefore, excluded from the jurisdiction of the Small Cause Court. In this case it was said that "the money was due as rent at the time of the assignment, and the assignment did not deprive it of that character, so far at all events as the tenant was concerned." The correctness of this decision was afterwards doubted, but the question was set at rest by a Full Bench, by which it was decided that a suit brought by an assignee of arrears of rent after they fell due for the recovery of the amount due is a suit for rent, and, therefore, excepted from the cognizance of the Court of Small Causes (*Srish Chandra Basu v. Nuchim Kazi*, 27 Calc., 827 ; 4 C. W. N., 357.) From this decision, however, Banerjee, J., dissented, holding that where the landlord's interest in the land is not assigned along with the arrears of rent after they fell due, a suit by the assignee for the recovery of the same is a suit for ordinary debt. The Full Bench decision was followed in *Mohendra Nath Kalumori v. Kailash Chandra Dogra*, (4 C. W. N., 605), in which a second appeal in a suit brought by an assignee of arrears of rent was allowed, being held not to be barred under the provisions of s. 586, C. P. C., but at the same time, as the plaintiff was not the landlord, and the defendant not his tenant, as defined in this Act, it was decided that the period of limitation applicable to the suit was not that laid down in art 2, schedule III of this Act, but three years only under art. 110, schedule II of the Limitation Act. A transferee of the whole interest of a co-sharer landlord including his claim for arrears is a landlord and can maintain a suit for the entire rent if he makes his co-sharers parties defendants : *Sashi Kumar Mirbuhar v. Sitanath Banerjee* 35 Calc., 744.

Money recoverable as rent.—The following moneys are recoverable as if they were rents, under enactments for the time being in force ; viz., (1) sums payable to *zamindars* and tenure-holders under the Bengal Survey Act (Act V, B. C., of 1875, sec. 38) ; (2) sums payable to Government or to any person who has entered into an agreement to collect water-rates for Government (Act III, B. C., of 1876, sec. 83) ; (3) sums payable to holders of estates or tenures under the provisions of the Cess Act (IX, B. C., of 1880, sec. 47) ; (4) sums payable to holders of estates or tenures in respect of land held rent-free (sec. 64 A of the same Act) ; (5) drainage charges payable by the tenant to the landlord under the Bengal Drainage

Act (VI, B. C., of 1880, sec. 44 ; *Mun Mahini Dasi v. Priya Nath Besali*, 8 C. W. N., 640 ; *Nafar Chandra v. Jyoti Kumar Mukhurji*, 11 C. W. N., 57) ; (6) interest on arrears of rent or other demands recoverable as rent, payable to managers of Courts of Wards Estates (Act III, B. C., of 1881, sec. 10) ; (7) sums payable to *zamindars* or tenure-holders under the Bengal Embankment Act (II, B. C., of 1882, sec. 74), which are recoverable as provided for the recovery of arrears of rent of *palni* tenures in Reg. VIII of 1819 ; and (8) sums payable to holders of estate or tenures by under-tenure holders or cultivating raiyats under ss. 23 and 24 of the Bengal Sanitary Drainage Act, VIII, B. C., of 1895.

Cesses.—Cesses, though recoverable as rent under the provisions of the Cess Act, are yet not rent, as they are not payable for the use and occupation of land, but under a liability incidental to the use and occupation of land. Under the terms of the second paragraph of this clause they are only included under the term “rent” in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chap. XII (relating to distraint), Chapter XIV (relating to sales for arrears under decree, and this in Bengal only), and Schedule III (relating to limitation) of this Act. It has however, been held that cesses are included within the term “rent” for the purposes of sec. 153 of the Act ; so that no second appeal lies, where the amount sued for does not exceed one hundred rupees, unless the case comes within the terms of the proviso to that section (*Mahesh Chandra Chaturji v. Uma Tara Debi*, 16 Calc., 638 ; *Rajani Kant Nag v. Jogeshwar Singh*, 20 Calc., 254). In the latter of these cases it was said that the provisions of the second paragraph of clause (5), section 3, are “enabling provisions, passed to extend the meaning of rent, and in no way interfere with the law refusing a right of appeal in suits below a hundred rupees in value.” The decisions in these two above cited cases would seem to be hardly in accordance with the strict terms of the clause.

In *Kishori Mohan Rai v. Sarodamoni Dasi*, (1 C. W. N., 30) it has been laid down that the provisions of sec. 174 of this Act, which allow of a sale of a tenure or holding being set aside on application within thirty days of the sale, are applicable to a sale in execution of a decree for arrears of road cess due on account of *lakhiraj* land, but the decision in this case proceeds on the terms of sec. 64A of the Road Cess Act, which enacts that arrears of road cess may be recovered by any process by which the amount might be recovered, if it were due on account of rent of a transferable tenure. Cesses, it has been held, are only personal debts and cannot properly be recovered under the Public Demands Recovery Act, 1880, (1) from the property on which it is assessed, when such property belongs to a third person, who has not been recorded as proprietor under Act VII, B. C., of 1876 (*Shekunt Hosain v. Sashi Kar*, 19 Calc.,

783). But under sec. 65, arrears of rent are a first charge on the tenure or holding on account of which they may become due, and "rent" in sec. 65 includes cesses; so that the tenure or holding on which they have been assessed may be sold in execution of decree for arrears of cess, provided the suit in which the decree has been obtained has been brought against the proper person. At a sale of a tenure held in execution of a decree the whole tenure will pass and the purchaser will acquire it free from any incumbrance, not being a registered and notified incumbrance under sec. 161 of the Act (*Nobin Chand Laskar v. Bansi Nath Paramanik*, 21 Calc., 722.) In a recent case, *Ahsanulla v. Manjura Banu*, (30 Calc., 778), in which *Nobin Chand Laskar v. Bansi Nath Paramanik* was not referred to, it has been held that the amount of cesses payable to a Collector under the Cess Act is not a charge on the estate in respect of which they are due. But this was not the case under the old law, or at a sale held in execution of a decree for arrears of cesses obtained under Act X of 1859. At such a sale, only the right, title and interest of the particular individual against whom the decree has been obtained will pass (*Mahanand Chakravarti v. Beni Madhb Chaturji*, 24 Calc., 27; *Uma Charan Bag v. Azadunnissa*, 12 Calc., 430). When property is sold in enforcement of a certificate under Act VII, B. C., of 1880, filed by the Collector to recover an amount due to the government for advance made under the Agriculturists' Loans Act, nothing but the judgment-debtors right, title and interest in the property at the date of service of the notice under s. 10 can pass to the purchaser (*Lachmi Narain Singh v. Nand Kishor Lal*, 29 Calc., 537).

Patwaries' dues.—Patwaries' dues are of course not rent, and, therefore, cannot be recovered under the provisions of this Act, but they are recoverable by the same processes as arrears of public revenue under sec. 36 of Reg. XII of 1817.

Dak Cess.—Dak cess is also not rent, and as there is no provision in any enactment that it is recoverable as if it were rent, it cannot be recovered under the provisions of this Act. Under sec. 12 of the Zamindari Dak Act, VIII, B. C., of 1862, contracts or engagements for the payment of dak cess may be made by any *zamindar* with any person holding under him (see *Sorodu Sundari Debya v. Uma Charan Sarkar*, 3 W. R., S. C. Ref., 17; *Bissonath Sarkar v. Sarnamayi*, 4 W. R., 6; *Rakhal Das Mukhurji v. Sarnamayi*, 6 W. R., 100); but this would not appear to make dak cess rent, or recoverable as such. In *Watson v. Srikrishna Bhunik* (21 Calc., 132), however, it has been held that where dak cess is claimed under the contract by which rent is payable, it must be regarded as rent, because it is claimed practically as part of the rent. This was followed in *Bijai Chand Mahtab v. Brohmodas Dutt*, (1 C. L.

J., 101 n). In a *patni kabulyat* executed in 1855, the *patnidar* agreed to pay the salary and expenses of the *amlah* of *dak chowki* houses, and to appoint them and superintend their work under the system of *zamin-dari dak* then in force; held, that this stipulation imposed on the *patnidar* the liability of paying *dak* charges recoverable from the *zamindar*, and, although the system had since been changed, the liability of paying such charges must be taken to exist. (*Jillar Rahman v. Bijai Chand Mahtab*, 28 Calc., 293). See note to s. 74. Act VIII, B. C., of 1862 (the Zamindari Dak Act) has now been repealed by Act IV of 1907 : the Repealing and Amending (Rates and Cesses) Act, 1907.

Chaukidari Tax.—Chaukidari tax, too, would not seem to come within the definition of rent, but in *Ahsanullah v. Tirtha Bashini* (22 Calc., 680), which was a suit for arrears of chaukidari tax, payable by a *patnidar* under the *patni* settlement, it was held that the amount for which he was thus liable was rent. It was said that the consideration of the payment was the occupation of the land, or the holding of the *patni* tenure, and the payment was to be made periodically to the *zamindar* by the *patnidar*, and was lawfully payable ; it came within the definition of rent. But see note to s. 74.

Interest.—Interest is not rent within the meaning of the term as defined in this Act (*Kailash Chandra De v. Turak Nath Mandal*, 25 Calc., 571 n). See also *Rai Charan Ghosh v. Kumud Mohan Datta*, (25 Calc., 571 ; 2 C. W. N., 297), and *Bhagaboti Debya v. Basanta Kumari*, 11 C. W. N., 110 ; 5 C. L. J., 69. But in s. 169 (c) the word “rent” includes interest (per Ghosh J., in *Bijai Chand v. S. C. Mukhurji*, 5 C. L. J., 27n), and in s. 161, as amended by sec. 51, Act I, B. C., of 1907, which prevails in Bengal only, the terms “arrears” and “arrear of rent” include interest decreed under sec. 67, or damages awarded in lieu of interest under sec. 68 (1).

Rent is moveable property ; the right to collect it may be sold.—It has been held in *Mohesh Chandra Chaturji v. Guru Prasad Rai*, (13 W. R., 401) that for the purposes of Acts VIII and X of 1859, rent comes within the terms “property” and “moveable property” and that, therefore, in execution of a decree for arrears of rent the judgment-debtor’s right to re-cover rent from an under-tenant may be sold. Whether this can be done under the present law has not yet been determined, but there would seem to be no reason why it should not be done. The right to collect back rents is frequently transferred privately, and there would seem to be no legal obstacle to its being transferred *in vitum*. “Debts” are expressly mentioned in sec. 266 of the Code of Civil Procedure as being liable to attachment and sale in execution of a

decree. But a decree for money cannot be sold under the provisions of sec. 273, C. P. C., and under sec. 148 (h) of this Act the assignee of a decree for arrears of rent cannot apply for execution of it, unless the landlord's interest in the land has become and is vested in him. We are, therefore, confronted with this anomaly that the right to collect rent may apparently be transferred privately and sold in execution of a decree, but the same right in its more perfect form of a decree cannot be sold under section 273 of the Civil Procedure Code, and can only be enforced by an assignee, if he further acquires his transferor's interest in the land. A suit by an assignee for rent, the right to collect which has been transferred to him, would be a suit for a debt and not one for rent; because the amount would not be payable to the landlord for the land (*Bhagwan Sahai v. Sangessar Chaudhri*, 19 W. R., 431; see *contra*, *Samasundari Dasi v. Brindaban Chandra Mazumdar*, Marsh, 199; *Lal Mohan Singh v. Trailakhyonath Ghosh*, 14 W. R., 456; *Hridai Mani Barmani v. Sibbold*, 15 W. R., 344).

(6) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., Feb. 9th 1903). But for "or an under-tenure-holder" read "and includes an under-tenure."

In this Act the word "tenure" is almost invariably used in its strict sense of the interest of a "tenure-holder," but in rulings under the old Acts, and often even now it is loosely used as synonymous with "tenancy." This is of course incorrect in cases to which this Act is applicable. "Tenure-holder" is defined in section 5, sub-sec. (1).

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

The subject of permanent tenures is discussed in the notes to Chap. III.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

Holding.—According to this definition the land held by an *under-raiyat* would not seem to be a holding, as in sec. 4 under-raiyats are classified separately from raiyats ; but no doubt it must be a holding, an under-raiyat being neither a proprietor nor a tenure-holder. This is further apparent from the terms of sec. 113, as amended by the Bengal Tenancy (Amendment) Act, III, B. C., of 1898, in which “the *holding* of an under-raiyat” is referred to.

An undivided share in a parcel or parcels of land cannot be a holding.—The definition of “holding” in this sub-section “evidently applies only to an entire parcel or entire parcels, and is not intended to include an undivided share in a parcel or parcels, and the reason seems to be obvious. A raiyati holding, which from the very definition of “raiyat” in section 5, sub-section 2, means land occupied by a raiyat for the purpose of cultivation, can be ordinarily held only in its entirety ; and cultivation of an undivided fractional share of a parcel of land will ordinarily be meaningless. A tenure, on the other hand, which is the “interest of a tenure-holder,” who is defined in section 5, sub-section (1), as a person who has acquired a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, may relate only to an undivided fractional share in land without leading to any practical difficulty. And it is for this reason that, while “tenure” is defined as the interest of a tenure-holder or an under-tenure-holder, “holding” is defined, not as the interest of a raiyat, but as a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. If the definition of “holding” were to include an undivided fractional share in a parcel or parcels of land, the definition would be incompatible with the provisions of sections 121 and 122 of the Act, which relate to the distraint of crops or other products of holdings : (per Banerjee, J., in *Hari Charan Basu v. Ranjit Singh*, 1 C. W. N., 521 ; 25 Calc., 917). See also *Baidya Nath De v. Ilim*, (25 Calc., 917 ; 2 C. W. N., 44). An undivided share does not fall within the definition of ‘holding’ given in Bengal Tenancy Act, and sec. 30 of the Act does not apply to the enhancement of rent of such a share (*Haribol Brahma v. Tasimuddin Mandal*, 2 C. W. N., 680), and the purchaser of an undivided share of raiyati holding cannot acquire any right to annul incumbrances under s. 157 (*Ahadulla v. Gagan Mollah*, 2 C. L. J., 10 ; 5 C. W. N., lxxxiv). Under Act VIII, B. C., 1869 a right of occupancy could be acquired within the meaning of the proviso to sec. 37 of the Revenue Sale Law in a share of undivided property (*Baidya Nath Munshi v. Sudharam Misri*, 8 C. W. N., 751). See also *Uma Charan Baruah v. Muni Ram Baruah*, (8 C. W. N., 192). The partition of an estate under Act VIII, B. C., of 1876, by which a holding, formerly appertain-

ing to the joint estate is apportioned between the co-sharers of the estate, has the effect of dividing the holding into two or more holdings (*Pratap Chandra Das v. Kamala Kanta Shaha*, 10 C. W. N., 818).

[(10) 'village' means **EASTERN BENGAL & ASSAM.** the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land-revenue survey which has been made of the Province of Bengal, or

(b) any survey made by the Government which may be adopted by notification in the Calcutta Gazette, as defining villages for the purposes of this clause in any specified area ;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.]

“(10) 'village' means the area defined, surveyed, and recorded as a distinct and separate village in—

(a) the general land-revenue survey of the districts which heretofore formed part of the Province of Bengal, or

(b) any survey made by the Government which may be adopted by notification in the Eastern Bengal and Assam Gazette, as defining villages for the purposes of this clause in any specified area ; and, where a survey has not been made by, or

This definition of "village" has been substituted for the old one by Act I, B. C., of 1907 for West Bengal, the parallel column shewing that for East Bengal by Act I, E. B.C., of 1908.

In the Select Committee's report on the Bengal Tenancy (Amendment) Bill, 1906, the following reasons for the substitution are given.

"It has been brought to our notice that some practical inconvenience has been caused by the present definition of "village" in sub-section (10) of section 3 of the Act as the area included in a village map of the revenue-survey. In the Cadastral Surveys which are now being made in parts of the province in connection with the preparation of a record-of-rights, it is found in many cases, however, that, owing to the clearance of jungle and other causes, the existing boundary of a village does not agree with that ascertained in the revenue-survey, and rule 4 (c) of the Rules made by the Bengal Government prescribes that, in such cases, the existing boundary ascertained by the Revenue-officer is to be followed for the purpose of map and record. We propose to bring the law into conformity with this rule, for, we consider it advisable that where a Cadastral Survey has been made on a larger scale and with greater care and accuracy than the Revenue Survey, Government should have power to declare that the maps of the Cadastral Survey should supersede those of the Revenue Survey for the purposes of the Tenancy Act. We propose, therefore, that in the Tenancy Act, the

under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village :

Provided that when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may by notification in the Eastern Bengal and Assam Gazette declare that in such local area, estate, tenure or part thereof 'village' shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the sanction of the Board of Revenue as the unit of survey and record."

definition of "village," which was adopted in the Land Registration (Amendment) Act of 1900, should be inserted. We consider, however, that the Revenue Survey map should be preserved as far as possible as the unit of survey and record in the course of the Cadastral Survey, and that no change should be made except with the sanction of the Board of Revenue. We have provided for this by the new clause 27A, which we propose to insert in the Bill."

The proviso is new : the reason for its introduction has been stated as follows.

"The definition of "village" as originally drafted was intended to enable and does enable Government to declare that the maps of surveys made in order to the preparation of record-of-rights should supersede those of the Revenue Survey. It has since been pointed out that the definition does not wholly meet the Revenue officer's practical difficulty. Within a given area the preparation of a record-of-rights may be in many different stages in different villages. It would be found impossible or at least extremely difficult in practice to issue the notification contemplated in clause (b) of the definition, as each village is measured. Thus in framing the record, in disposing of objections and deciding disputes, with regard for instance to occupancy rights the Revenue officer finds it necessary to treat as a village a unit which has not yet become a village in the eye of the law. The proviso is intended to meet this difficulty and to enable Government to declare that when a certain area has been adopted with the sanction of the Board of Revenue as the unit of survey and record, such area or unit shall *ipso facto* become a "village" for all the purposes of the Act."

(11) "Agricultural year" means, where the Bengali year prevails, the year commencing on the first day of Baisakh, where the Fasli or Amli year pre-

vails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

Agricultural years.—The Bengali year prevails generally throughout Bengal, and is current in those districts in which other years are not prevalent. The 1st November, 1885, the date of commencement of this Act, was the 17th Kartik, 1292, according to the Bengali year.

The *Fasli* or “harvest year” prevails in the districts of the Patna division (*viz.*, Champaran, Saran, Muzaffarpur, Darbhanga, Patna, Gaya, and Shahabad), in the districts of Bhagalpur and Monghyr of the Bhagalpur division, in Parganas Dharampur, Harawat, Chhai and Dhaphar in the west of the Purneah district, in the Godda sub-division, Tuppa Harwai of the Dumka sub-division and Taluk Taor of the Deogarh sub-division, all in the district of the Sonthal Parganas, in the Palamau district, in the Kharakdiha sub-division of the Hazaribagh district, in pargana Barabhum in the Manbhum district, and in parts even of Singhbhum of the Chota Nagpur division. The 1st November, 1885, was the 9th Kartik, 1298, according to the Fasli year.

The *Amli* (revenue) or *Wilayati* year prevails in Orissa, in the Tamluk and Contai sub-divisions of the Midnapur district, also in the *sadar* sub-division of the same district, except the thanahs Binpur, Garhbeta and parts of Debra and Keshpur, and in those parts of the Singhbhum district where the Fasli year is not used. That it is in force in parts of the Chota Nagpur division is apparent from secs. 31 and 44, Act I, B. C., of 1879. It commences on a varying date each year. The 1st November, 1885, was the 18th Kartik, 1293, of the Amli or Wilayati year.

The *Maghi* (*i. e.* the full-moon of Magh) year prevails in Chittagong. The 1st November, 1885, was the 17th Kartik, 1247, according to the Maghi year.

The *Mulki* year prevails in those parts of the district of Purneah, *i. e.*, Parganas Haveli, Surjapur, Powakhali, &c., where the Fasli and Bengali years are not in force. The Fasli year prevails in Parganas Dharampur, Harawat, Chhai and Dhaphar, and the Bengali year in the southern and south-eastern parts of the district, *viz.*, Parganas Kakjole, Badour, &c. The Mulki year is a year in advance of the Bengali year.

In the Ranchi district and the adjoining parts of the Hazaribagh district, the *Sambat* year is in force. The *Sambat* year can be readily ascertained by adding 57 to the year of the Christian era.

(12) “Permanent Settlement” means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

Permanent Settlement.—This clause was framed with the intention of making it clear that the Permanent Settlement referred to in the Act “is in all cases the Permanent Settlement of Bengal, Behar and Orissa, made in 1793, and not, as regards any district or area subsequently settled, the Permanent Settlement of such district or area.” (Rent Commission Report, vol. I. p. 14, para 23). This was the rule laid down in *Paran Bibi v. Sidi Nazir Ali*, (W. R., Sp. No., Act X, 71). See also *Nagendra Lal Chaudhuri v. Nazir Ali*, (10 C. W. N., 503). The date of the Permanent Settlement has been held to be the 22nd March, 1793 (*Dhanput Singh v. Guman Singh*, W. R., Sp. No., Act X, 61; *Rajessari Debi v. Shibnath Chaturjee*, 4 W. R., Act X, 42). Certain portions of Reg. III of 1828 show that the Sundarbans up to that date continued the property of the State. (*Tamasha v. Asutosh Dhar*, 4 C. W. N., 513).

(13) “Succession” includes both intestate and testamentary succession.

(14) “Signed” includes “marked” when the person making the mark is unable to write his name; it also includes “stamped” with the name of the person referred to.

(15) “Prescribed” means prescribed from time to time by the Local Government by notification in the official Gazette.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., February 9th, 1903): but the present law there is Act VI, B. C., 1908.

(16) “Collector” means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

Notifications under this sub-section.—By a notification, dated 21st April, 1886, published in the *Calcutta Gazette* of the 28th *idem*, Part I, p. 466, all officers in charge of sub-divisions were invested with the powers of a Collector for the purpose of discharging the functions referred to in sections 69 to 71 (relating to produce rents) of the Act. By a notification, dated 28th May, 1886, published in the *Calcutta Gazette* of 2nd June, 1886, Part I, page 652, the Deputy Collector of Howrah, and

by a notification, dated the 4th May, 1893, published in the *Calcutta Gazette* of the 5th *idem*, Part I, p. 274, the Senior Deputy Collector attached to the sadar station of Gaya, were invested with powers of a Collector for the purpose of discharging the functions referred to in these sections. By a notification, dated the 7th October, 1886, published in the *Calcutta Gazette* of the 13th *idem*, Part I, p. 1902, all officers in charge of subdivisions were invested with the powers of a Collector for the purpose of discharging the functions referred to in sections 12, 13 and 15 of the Act.

The appointment of an officer to perform the functions of a Collector under particular sections does not make him a Collector "for all purposes of the Act" (*Mohabat Singh v. Umahil Fatima*, 28 Calc., 69).

(17) "Revenue-officer" in any provision of this Act, includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., February 9th, 1903.) The present law there is Act VI, B.C., of 1908.

"Under sec. 3 (17) of the Tenancy Act, officers cannot be vested with the general powers of a Revenue Officer, but with certain functions only as specified in certain provisions of the Act."(1)

Notifications under this sub-section.—By a notification, dated the 11th February, 1890, published in the *Calcutta Gazette* of the 12th *idem*, Part I, p. 121, all Deputy Collectors in the Lower Provinces of Bengal have been authorized to discharge the functions of Revenue Officers under Chap. X and have been vested with the powers of a Settlement Officer under rule 1, Chap. VI of the rules framed by Government under this Act. By notification No. 1628 L. R., dated the 17th March, 1905, all Deputy Commissioners and all Deputy Collectors now serving, or who may hereafter serve in the districts of Hazaribagh, Ranchi, Singhbhum and Palamau, are authorized to discharge all the functions of a Revenue Officer under Chapter II of the Chota Nagpur Commutation Act, IV (B. C.) of 1897, as amended by Act V (B. C.) of 1903. The present law in the Chota Nagpur Division will be found in Act VI, B. C., of 1908.

They are also vested with all the powers of a Revenue officer under Rule 3 of the Government Rules under section 13 of the Chota Nagpur Commutation Act, IV (B.C.) of 1897.

(1) Board's Settlement Manual, 1908, Part I, Ch. 5, rule 76 p. 22, dated 8th May, 1876.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

Documents executed by landlords or tenants will be found to come within one or other of the following classes :—(1) deeds of sale, mortgage or gift of the interest of the landlord or tenant ; (2) leases ; (3) contracts of enhancement ; and (4) documents creating incumbrances on tenures and holdings.

Registration of deeds of sale, mortgage or gift.—Deeds of sale or mortgage, of rights in or of tangible immoveable property of the value of Rs. 100 and upwards, and deeds of gift of immoveable property of any value must be registered (sec. 17, Act XVI of 1908, secs. 54, 59, and 123 of Act IV of 1882). Formerly, the registration of deeds of sale or mortgage of such property of less than Rs. 100 in value was optional (sec. 18, Act III of 1877) ; but since the passing of Act IV of 1882, sales of such property can only be made by registered instrument, or, in the case of immoveable property not coming within the provisions of sections 12 and 18 of this Act (*i. e.* in the case of immoveable property other than permanent tenures and raiyati holdings at fixed rates), by delivery of the property (*Narain Chandra Chakravarti v. Dataram Rai*, 8 Calc., 597 ; 10 C. L. R., 241 ; *Mukhan Lal Pal v. Banko Bihari Ghosh*, 19 Calc., 623), and registration of a deed of sale constitutes a sufficient delivery of the deed to pass the interest in land referred to therein (*Ponnaya Goundan v. Muttu Goundan*, 17 Mad., 146). A mortgage of immoveable property of less than Rs. 100 in value, not coming within the provisions of sections 12 and 18 of this Act, may be effected either by unregistered deed signed by the mortgagor and attested by two witnesses, or, except in the case of a simple mortgage, by delivery of the property (sec. 59, Act IV of 1882). Delivery of possession of property of less than Rs. 100 in value in pursuance of a contract of sale or mortgage, which does not come within the provisions of sections 12 and 18 of this Act, gives (except in the case of a simple mortgage, in which there can be no transfer of possession) a good title and will not be affected by a subsequent registered deed in favour of another ; while delivery of possession of property of above that value will be of no avail as against a subsequent registered deed, notwithstanding the provisions of sec. 48 of the Registration Act, which prescribe that all duly registered non-testamentary documents relating to moveable or immoveable property "shall take effect against any oral agreement or declaration unless where the agreement or declaration has been accompanied or followed by delivery of possession." But it has been held that where a person

purchases with actual notice of a prior oral agreement to sell to another person, he will not be allowed to retain the property, and a suit for specific performance may be successfully maintained by such other person against him and the vendor (*Waman Ram Chandra v. Dhondiba Krishnaji*, 4 Bom., 126 ; *Nemai Charan Dhabal v. Kokil Bag*, 6 Calc., 534 ; 7 C. L. R., 487 ; *Chandra Nath Rai v. Bhairab Chandra Sarma*, 10 Calc., 250 ; *Chandra Kant Rai v. Krishna Sundar Rai*, 10 Calc., 710 ; *Kannan v. Krishnan*, 13 Mad., 324.) The provisions of section 48 of the Registration Act are still applicable in the case of sales and mortgages of property of less than Rs. 100 in value to which the terms of sections 12 and 18 of this Act will not apply, and of leases for terms not exceeding one year, or exempted by Government from registration under sec. 17 of the Registration Act.

The provisions of section 12 and 18 of this Act must be read as supplemental to those of the Registration and Transfer of Property Acts, and they make the registration of deeds of transfer by sale, gift or mortgage of permanent tenures and raiyati holdings at fixed rates compulsory ; so that oral agreements or declarations, or unregistered deeds relating to such transfers of such properties, can be of no avail, even if accompanied by possession (*Dharmodas Das v. Nistawini Dasi*, 14 Calc., 446). Deeds of sale or of gift of ordinary raiyati holdings of any value must also be registered under sections 54 and 123 of the Transfer of Property Act. Deeds of mortgage of such holdings must be registered if the amount secured exceeds one hundred rupees (*Nabira Rai v. Achampat Rai*, 3 All., 422). If the amount secured is less than one hundred rupees, the deed, if there be one, must be signed by the mortgagor and attested by at least two witnesses.

Leases.—There is no definition of “lease” in this Act. In sec. 2, Act III of 1877, the term “lease” is said to “include a counterpart kabuliyat, an undertaking to cultivate or occupy and an agreement to lease.” In sec. 2, cl. 16, Act II of 1899, it is defined as meaning “a lease of immoveable “property” and as including also “(a) a patta (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immoveable property, (c) any instrument by which tolls of any description are let, and (d) any writing on an application for a lease intended to signify that the application is granted.” In section 105 of the Transfer of Property Act (IV of 1882) a lease of immoveable property is said to be a “transfer of the right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the trans-

feror by the transferee who accepts the transfer on such terms." It is, therefore, not a mere contract but a conveyance and affects a transfer of property (*Raghunathdas Gopaldas v. Morarji Jutha*, 16 Bom., 568). Mr. Field in his Digest, p. 3, suggests the following definition :—" Lease means a contract creating or continuing the relation of landlord and tenant and executed by the landlord in favour of the tenant." " Pattah," he defines, " as a written lease granted to a ryot." A lease granted to a tenant need not in all cases be in writing. Parol leases are in most cases quite valid. In this Act the word "lease" is apparently used sometimes in the sense of a parol contract of letting.

Cultivators' Leases exempted from stamp duty.—Article 35, Schedule I, of the Stamp Act exempts from duty (1) a "lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees (see *In re Bhawan Badhar*, 6 Bom., 691); and (2) the counterpart of any lease granted to a cultivator," and art. 16 of the same schedule exempts from duty the surrender of a lease, when such lease is exempted from duty. The Allahabad High Court has said that by the term "cultivator" in this article only those persons are connoted who actually cultivate the soil themselves or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock. The class of husbandmen or actual agriculturists is meant; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease" (5 All., 360; Stamp Ref.).

The Board of Revenue ruled in 1896 and again in 1902 (See Board's Circular Order No. 14 of 1902) that a document executed by a raiyat surrendering a verbal lease, evidenced only by the entry of his name in the landlord's register, must be stamped as a "release" under art. 55, Schedule I, and was not exempt from duty as a surrender of a lease under art. 61, Schedule I. This however has been cancelled by a recent circular of March 1909, and the present ruling is that :— a lease that is liable to stamp duty is a lease as defined by sec. 2, (16), of Act II of 1899 and is clearly a written lease. A verbal lease is exempt from duty and a written surrender of such a lease is also exempt from duty under this article. In the case of written leases falling within Article 35, exemption (a) and in the case of all verbal leases an instrument whereby a cultivator surrenders his tenant right is exempted under this article. Payment of consideration for the surrender does not make an instrument of surrender

liable to stamp duty, which would otherwise have been exempted under the provisions cited above : Board's Letter No. 1402 B dated the 13th March 1909. See also *Bhairab Chandra Das v. Kali Chandra Chakraparti* (16 W. R., 56) ; *Sufdar Ali Khan v. Lachman Das*, (2 All., 554) ; *Gurdial v. Jauhari Mal*, (7 All., 820).

Registration of leases.—Section 17, cl. (d), of Act XVI of 1908 makes compulsory the registration of leases of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent. The Local Government may, however, exempt from the operation of this clause leases executed in a district or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. Section 18, cl. (c) of the Act makes optional the registration of leases of immoveable property for any term not exceeding one year and leases exempted under section 17. These provisions are repeated in section 107 of the Transfer of Property Act, which prescribes that “a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument”; while “all other leases of immoveable property may be made either by an instrument or by oral agreement.” Section 106 of the same Act further provides that “in the absence of a contract or a local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy.” But by section 117 of the Act the provisions of Chap. V, in which both sections 106 and 107 occur, do not apply to leases for agricultural purposes, unless extended to them by the Local Government, which has not yet been done ; so the above cited provisions of the Transfer of Property Act have as yet no practical importance, so far at least as agricultural leases are concerned.

Leases held to require registration.—When the term of a pattah is expressed by the words *sau basan*, a year-by-year tenancy is meant, that is, a tenancy which is certain for the period of one year and will continue beyond that period until it is properly put an end to by either party, and such a pattah must be registered (*Ram Kumar Mandal v. Brajahari Mirdha*, 2 B. L. R., A. C., 75 ; 10 W. R., 410). A lease for more than a year is none the less a lease, because a condition is attached to the consideration and because its term may be lessened on the payment of a sum of money by the lessor : it must, therefore, be registered and cannot be used in evidence, if not registered (*Baksh Ali v. Nabotara*, 13 W. R., 468). The same rule applies in the case of a kabuliati for one year, but containing a provision extending its term to more than one

year (*Kisto Kali v. Agemona Bewa*, 15 W. R., 170). A lease for one year but which is to remain in force till another pattah is granted, must be registered (*Venkatachellum Chetti v. Audian*, 3 Mad., 358). A *daul darkhast*, or proposal for a lease of seven years, on which the word "granted" has been written by the landlord as a sign of his acceptance of the proposal, requires registration (*Safdar Reza v. Amzad Ali*, 7 Calc., 703; 10 C. L. R., 121). But see *Dzwarka Nath Saha v. Ledu Sikdar*, (33 Calc., 502). A *sar-i-peshgi* lease granted for one year, but with a stipulation that unless the loan were repaid within that time, it should continue in force, is a lease of which the registration is compulsory (*Bhobani Mahto v. Shibnath Para*, 13 Calc., 113). An agreement for a lease for four years needs registration, if the parties intend to create a present demise, though the agreement may contemplate the subsequent execution of a formal document (*Parmanandus Jivandas v. Dharsey Virji*, 10 Bom., 101). A lease of immoveable property for the life of the lessee is a lease for a term exceeding one year and therefore requires registration (*Parshotam Vishnu v. Nana Prayag*, 18 Bom., 109).

Leases held not to require registration.—A lease for one year certain containing an expression on the tenant's part to hold the land longer at the same rent, if the landlord should desire it, is a lease for a term not exceeding one year and does not require to be registered (*Apu Budgavda v. Narhari Annaji*, 3 Bom., 21. See also *Jagjivan Das Jawherdas v. Narayan* 8 Bom., 493; *Jagdish Chandra Biswas v. Abidullah Mandul*, 14 W. R., 68; *Sauntho Prosud Das v. Parasu Pradhan*, 26 W. R., 98; *Khayali v. Husain Bakhsh*, 8 All., 198; and *Boyd v. Krieg*, 17 Calc., 548). Where a lease contained provisions for an "annual rent" and for payment "of rent in advance each year," but also contained a clause whereby the tenancy was absolutely determinable at any moment at the option of the lessor, it was held that such a deed was not compulsorily registrable (*Ratnasabhapathi v. Venkatachalam* 14 Mad., 271). Mere preliminaries to a lease, such as a *daul darkhast* or proposal for a lease, unaccepted by the landlord, do not require registration (*Chuni Mandar v. Chandi Lal Das*, 14 W. R., 178; *Mehrunissa v. Abdul Ghani*, 17 W. R., 509; *Tachmessar Singh v. Dukho*, 7 Calc., 708; 10 C. L. R., 127; *Lal Jha v. Negru*, 7 Calc., 717). Such preliminaries to a lease as a *daul*, or an *amaldari*, also need not be registered (*Golak Kishor Acharji v. Nand Mohan De*, 12 W. R., 394). An *amaldastak*, bestowed merely to give possession pending the execution of a formal instrument does not require to be registered (*Barwari Lal v. Sangam Lal*, 7 W. R., 280). Neither does an *amulnama* not creating an interest beyond a year (*Radhika Prasad Chandra v. Ram Sundar Rai*, 1 B. L. R., A. C., 7; *Abdul Vidoni Jones v. Harone Esmile*,

7 B. L. R., App., 21). An agreement for a lease does not require registration (*Bhairab Nath Khettri v. Kishori Mohan Shaha*, 3 B. L. R., App., 1). Where by an *ekrarnama* tenants conjointly promised that they would sign, and have registered, *kabuliyats* for rents at rates mentioned, it was held that the document did not come under cl. (h) of sec. 17 of the Registration Act, III of 1877, but come under cl. (h) as a document merely creating a right to obtain another document, which would, when executed, create or declare an interest (*Pratap Chandra Ghosh v. Mohendra Nath Parkhait*, 17 Calc., 291; L. R., 16 I. A., 233). A *diul fihrist*, containing a list of the holdings and rates of rent of the raiyats with their signatures and specifying seven years as the period for which these holdings were to continue need not be registered (*Kartik Nath Pandey v. Khakan Singh*, 1 C. L. R., 328; *Ganga Prasad v. Gagan Singh*, 3 Calc., 322; *Narain Kumari v. Ram Krishna Das*, 5 Calc., 864). A document which is not really a lease but an usufructuary mortgage, the consideration of which is less than Rs. 100, is not inadmissible for want of registration (*Ishan Chandra v. Sujan Bibi*, 7. B. L. R., 14; *Ram Dulari Koer v. Thakur Rai*, 4 Calc., 61). A document providing for the payment of a portion of a *salami* on the day when possession was to be given and for the payment of the remainder by instalments is not a lease or an agreement to lease, and is admissible in evidence without registration (*Kedar Nath Mitra v. Surendro Deb Rai*, 9 Calc., 865). An agreement varying the terms of a lease need not be reduced to writing or registered (*Satyesh Chandra Sarkar v. Dhanpal Singh*, 24 Calc., 20). Leases creating mere tenancies-at-will do not require registration (*Khuda Buksh v. Sheedin*, 8 All., 405; *Jivraj Gopal v. Atmaram Dayaram*, 14 Bom., 319). A document given by the owner of land to his tenant varying the terms of tenancy with reference to the amount of rent to be paid is not an instrument relating to an interest in immoveable property and does not require registration (*Obai Goundan v. Ramalinga Ayyar*, 22 Mad., 217).

Registration of under-raiyats' leases.— Besides being subject to the above mentioned provisions, under-raiyats' leases must also be registered, if the rents reserved in them exceed by 25 per cent. the rents payable by their raiyat landlords [sec. 48 (a)]; and their raiyat landlords cannot recover rents exceeding their own by more than 50 per cent. In case of non-registration, the raiyat landlords cannot recover from the under-raiyats rents exceeding by 25 p. c. the rents payable by them [sec. 48 (b)]. Further, an under-raiyat's lease is only valid against the raiyat's landlord if registered, [sec. 85 (1)]; and no such lease shall be admitted to registration, if it purports to create a term exceeding nine years [sec. 85 (2)]. In the case of sub-leases executed before the

commencement of the Tenancy Act, they are only valid for nine years after the commencement of the Act [sec. 85 (3)].

Registration of contracts of enhancement.—Contracts for the enhancement of occupancy or non-occupancy raiyat's rent must be registered [secs. 29 (a) and 43], subject, however, to proviso (1) to s. 29, and to the proviso to s. 43, regarding three years' continuous payment. There is no such provision with regard to the enhancement of the rents of tenure-holders, raiyats holding at fixed rates, or under-raiyats, except that in the case of under-raiyats, when the rents payable by them exceed the rents payable by their raiyat landlords by more than 25 per cent., the contract must be registered, and even then they cannot exceed their raiyat landlords' rents by more than 50 per cent.

Registration of documents creating incumbrances on tenures or holdings.—Section 161 enacts (1) that the term "incumbrance" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a "protected interest," as defined in sec. 160; and (2) that the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in the manner provided in the Act. In the case of the sale of a tenure or holding at fixed rates, it is first put up to sale subject to registered and notified incumbrances (sec. 164), and it is only in the case of the sale proceeds being insufficient to liquidate the amount of the decree with costs, that the tenure or holding at fixed rates can be sold with power to annul all incumbrances (sec. 165). Occupancy holdings are ordinarily sold with power to annul all incumbrances (sec. 166); but the Local Government has power to direct by notification in the official Gazette that occupancy holdings or any specified class of occupancy holdings in any local area, put up for sale in execution of decrees for rent due on them, shall be sold subject to registered and notified incumbrances (sec. 168). So far the Local Government has not issued any such notification.

Effect of non-registration of documents required to be registered.—Section 49 of the Registration Act enacts that no document required by section 17 to be registered shall affect any immoveable property comprised therein, or be received as evidence of any transaction affecting such property unless it has been duly registered, and under sec. 91 of the Evidence Act secondary evidence of the contents of such

a document is inadmissible (*Man Mohini Dasi v. Bishen Mayi Dasi*, 7 W. R., 112; *Omar v. Abdul Ghafur*, 9 W. R., 425; *Rahamatullah v. Sariatullah*, 10 W. R., F. B., 51; 1 B. L. R., F. B., 58; *Ram Kumar Mandal v. Brajahari Mirdah*, 10 W. R., 410; 2 B. L. R., A. C., 75; *Kabulan v. Shamsheer Ali*, 11 W. R., 16; *Kala Chand Mandal v. Gopal Chandra Bhattacharji*, 12 W. R., 163; *Dinonath Mukhurji v. Debnath Mallik*, 5 B. L. R., App., 1; 13 W. R., 307; *Futeh Chand Sahu v. Lilambar Singh Das*, 9 B. L. R., 433; 14 Moo. I. A., 129; 16 W. R., P. C., 26; *Crowdie v. Kular Chaudhri*, 21 W. R., 307; *Shiba Sundari Debya v. Saudamini Debya*, 25 W. R., 78; *Ram Chandra Halder v. Gobinda Chandra Sen*, 1 C. L. R., 542; *Hurjivan Virji v. Jamselji Nowroji*, 9 Bom., 63; *Nangali v. Raman*, 7 Mad., 226; *Sambayya v. Gangayya*, 13 Mad., 308; *Parashram v. Ganpat*, 21 Bom., 533).

A lease which is by law required to be registered cannot, if unregistered, be received in evidence, even of the tenant's personal liability there under (*Martin v. Sheo Ram Lal*, 4 All., 232). But when the right of the landlord is admitted, and the rate of the rent is not disputed and the only question is as to payment, a suit for arrears of rent should not be dismissed for want of registration of the defendant's *kabuliat* (*Reza Ali v. Bhikan Khan*, 7 W. R., 334; *Dinonath Mukhurji v. Debnath Mallik*, 14 W. R., 429). If a contract of letting is for want of registration ineffectual, the landlord is not debarred from giving other evidence of a tenancy and requiring the Court to adjudicate on his right to eject (*Venkatagiri zamindar v. Raghava*, 9 Mad., 142). A tenant can prove his tenancy without proving his lease, if he has one, which is inadmissible for want of registration (*Surath Narain Lal v. Catherine Sophia*, 1 C. W. N., 248; *Sitinath Pal v. Kartik Garui*, 4 C. W. N., 121; *Fazil v. Keramuddin*, 6 C. W. N., 916; see also *Kedarnath Joardar v. Sharafunnissa*, 24 W. R., 425). An unregistered document, if followed up by delivery of possession, may be used as evidence of that possession (*Gopi Chand v. Liakat Hossein*, 25 W. R., 211). In a suit for a breach of a covenant to register contained in an unregistered mortgage deed, the defendant cannot plead the non-registration of the instrument for the purpose of protecting himself. Such a deed is admissible in evidence for a collateral purpose without being registered (*Sham Narain Lal v. Khemajit Maloe*, 4 B. L. R., F. B., 1; 12 W. R., F. B., 11; *Mammothnath De v. Srinath Ghosh*, 20 W. R., 107; *Nagappa v. Devu*, 14 Mad., 55; *Raja of Venkatagiri v. Narayana Reddi*, 17 Mad., 456; *Magniram v. Gurmukh Rai*, 26 Calc., 334). An unregistered document requiring registration as affecting an interest in land is admissible in evidence for any purpose for which registration is collateral (*Lachmipat Singh Dugar v. Khairat Ali*, 4 B. L. R., F. B., 18; 12 W. R., F. B., 11; *Shib Prasad Dass v. Annapurna*, 12 W. R., 435; 3 B. L. R.,

A. C., 451 ; *Ulfatunissa v. Hossain Khan*, 9 Calc., 520 ; 12 C. L. R., 209 ; *Khushalo v. Bihari Lal*, 3 All., 523 ; *Subramaniam v. Perumal Reddi*, 18 Mad., 454 ; *Antaji v. Dattaji*, 19 Bom., 36 ; *Vani v. Bani*, 20 Bom., 553). But this is only when the transaction is divisible, as when upon a loan of money it is agreed (1) that the loan shall be secured by a bond containing a covenant for repayment of the sum advanced : and also (2) that certain designated property shall be hypothecated as collateral security for the repayment of the loan (*Krishna Lal Ghosh v. Bonomali Rai*, 5 Calc., 611 ; 5 C. L. R., 43 ; *Bengal Banking Corporation v. Mackertich*, 10 Calc., 315 ; *Sheo Dial v. Prag Dat Misr*, 3 All., 229 ; *Guur Charan Sarma v. Jinnat Ali*, 11 C. L. R., 166 ; *Lachman Singh v. Kesri* 4 All., 3), and when the transaction is indivisible, the unregistered document is inadmissible in evidence (*Matangini Dasi v. Ramnarain Sadkhan*, 4 Calc., 83 ; 2 C. L. R., 428 ; *Raju Balu v. Krishnarav Ram Chandra*, 2 Bom., 273 ; *Venkatrayudu v. Papi*, 8 Mad., 182 ; *Gurunath Shrinivas Desai v. Chenbasappa*, 18 Bom., 745). In two cases it has been held that when the plea as to the inadmissibility of evidence for want of registration has not been taken in the Court below, it cannot be allowed in second appeal (*Girish Chandra Rai Chaudhri v. Amina Khatun*, 3 B. L. R., App., 125 ; *Currie v. Chatty*, 11 W. R., 520). But these two rulings are of date prior to the passing of sec. 49 of the Registration Act, and would not appear to be now good law. In another case it has been held that a Court is bound in regular appeal to entertain an objection that a document is invalid for want of registration, even though no objection may have been raised to its admissibility in the Court below (*Basawa v. Kalkapa*, 2 Bom., 489).

Conflict between registered and unregistered deeds :—

Section 50 of the Registration Act provides that documents of certain specified kinds, if registered, shall take effect as regards the immoveable property to which they relate against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not. The provisions of this section are of much less importance than they were before the passing of the Transfer of Property Act, sec. 54 of which Act "virtually abolishes optional registration" (per Garth, C. J., in *Narain Chakravarti v. Dataram Rai*, 8 Calc., 597 ; 10 C. L. R., 241). The only deeds affecting the interests of landlords or tenants in regard to which there can now be a conflict between registered and unregistered deeds are leases of immoveable property for a term not exceeding one year, leases specially exempted by Government under sec. 17 of the Registration Act, and mortgages of immoveable property of less than Rs. 100 in value. Registered deeds of these classes must prevail over

unregistered deeds, whether accompanied by possession or not, except when the lessee or mortgagee under the subsequent deed has taken with notice of the prior deed, in which case the prior deed will prevail (*Abul Hussain v. Raghu Nath Sahu*, 13 Calc., 70. See also *Fazladin Khan v. Fakir Mahamed Khan*, 5 Calc., 336 ; 4 C. L. R., 257 ; *Narain Chakravarty v. Dataram Rai*, 8 Calc., 597 ; 10 C. L. R., 241 ; *Bimaraz v. Papaya*, 3 Mad., 46 ; *Kondayya v. Guruvappa*, 5 Mad., 139 ; *Muthanna v. Alibeg*, 6 Mad., 174 ; *Kadar v. Ismail*, 9 Mad., 119 ; *Krishnamma v. Suranna*, 16 Mad., 148 ; *Shivram v. Genu*, 6 Bom., 515 ; *Hathising Sobhai v. Kuvarji Jawher*, 10 Bom., 105 ; *Trikam Madhav Shet v. Harjivan Shet*, 18 Bom., 332 ; *Dewan Singh v. Jadho Singh*, 19 All., 145). In one case, following *Wyatt v. Barwell*, (19 Ves., 432), it has been said that it is only when notice of a prior conveyance of which registration is not compulsory is so clearly proved as to make it fraudulent in the purchaser to take and register a conveyance in prejudice to the known title of another that the registered deed will be suffered to be affected (*Bhulu Rai v. Jakhu Rai*, 11 Calc., 667. See also *Narasimulu v. Somanna*, 8 Mad., 167). In another case it has been ruled that although the mere fact of possession having been taken by a purchaser under an unregistered conveyance is insufficient of itself to establish a good title to a property as against a subsequent registered purchaser, and is not conclusive evidence of notice as against him, yet in the majority of cases such possession is very cogent evidence of notice (*Nani Bibi v. Hafizulla*, 10 Calc., 1073. See also *Dino Nath Ghosh v. Aulakmani Debi*, 7 Calc., 753 ; 10 C. L. R., 129 ; *Lakshman Das v. Dasrat*, 6 Bom., 168 ; *Dandaya v. Chembasapa*, 9 Bom., 427 ; *Moreswar Balkrishna v. Dattu*, 12 Bom., 569 ; *Ram Auter v. Dhanauri*, 8 All., 540).

A Registered lease will not however prevail against a lease effected by delivery of possession and payment of premium and rent. (*Ismail v. Ali Mahomed*, 13 C. W. N., civ.)

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants, (namely) :—

Classes of tenants.

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats, and
- (3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats : and the following classes of raiyats, (namely) :—

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Extended to Orissa (Not., Sept., 10th, 1891).

In addition to the classes of raiyats mentioned in sub-section (3), there is also another class viz, settled raiyats, i.e., raiyats who have for a period of twelve years held as raiyats lands situate in any village (vide sec. 20 and note thereto).

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing

Meaning of "tenure-holder" and "raiayat."

tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(a) local custom ; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

Extended to Orissa (Not., September 10th, 1891.) Sub-section (1) was extended to the Chota Nagpur division, except the district of Manbhum (Not., Feb. 9th, 1903) ; but the present law there is Act VI, B. C., 1908.

Meaning of "tenure-holder" and "raiya."—The Select Committee in their report on the Bengal Tenancy Bill, 1883, explained that in this section they had "endeavoured to describe, rather than to define, each class," as in their opinion "any attempt to frame a rigid definition of either class would tend to create rather than to remove difficulties." (Selections from papers relating to the Bengal Tenancy Act, 1885, p.

231). The description given is, however, in accord with the rulings of the High Court on the subject under the former rent law. See *Dhanpat Singh v. Guman Singh*, W. R., Sp. No., 1864, Act X, 61; *Gopi Mohan Rai v. Shib Chandra Sen*, 1 W. R., 68; *Ram Mangal Ghosh v. Lukhi Narain Saha*, 1 W. R., 71; *Karu Lal Thakur v. Lachmipat Dugar*, 7 W. R., 15; *Uma Charan Datta v. Uma Tara Debi*, 8 W. R., 181; *Kali Charan Singh v. Amiruddin*, 9 W. R., 579; and *Durga Prasanno Ghosh v. Kali Das Datta*, 9 C. L. R., 449. In the last mentioned case it was pointed out by Field J., that "the only test of a raiyati interest which can be applied in the present state of the law is to see in what condition the land was when the tenancy was created. If raiyats were already in possession of the land, and the interest created was a right, not to the actual physical possession of the land, but to collect the rents from those raiyats, that is not a raiyati interest. If, on the other hand, the land was jungle or uncultivated or unoccupied, and the tenant was let into physical possession of the land, that would be a raiyati interest; and the nature of this interest so created would not, according to a number of decisions of this Court, be altered by the subsequent fact of the tenant sub-letting to under-tenants."

The mere fact that a person has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rent is not sufficient to prove that he is a tenure-holder within the meaning of the Bengal Tenancy Act. It must be proved that the land was let for agricultural or horticultural purposes (*Umrao v. Mahomed Rajobi*, 27 Calc., 205; 4 C. W. N., 76). The description of a property as a "jote" does not necessarily show that it is not a tenure, and that it is simply a cultivating "jote" or holding (*Nawab Ali v. Hemanto Kumari*, 8 C. W. N., 117). A tenancy which was originally created for the purpose of cultivation and not collection of rent was held partly *nij-jote* and partly let out to tenants; held, that this did not change the original character of the grant which was raiyati, even in respect of the portion let out (*Baidya Nath Mandal v. Sudharam Misri*, 8 C. W. N., 751.) A tenant holding land and paying as rent therefor a sum of money exceeding one hundred rupees per annum is, for the purposes of assessment under the Cess Act, a tenure-holder and not a cultivating-raiyat (*Cuspersz v. Kumar Singh*, 5 C. W. N., 535). A *zar-i-peshgi* lease is not a mere contract for the cultivation of the land at a rent, but is a security to the tenant for his money advanced (*Bengal Indigo Co. v. Raghubar Das*, 24 Calc., 272; L. R., 23 I. A., 158; 1 C. W. N., 83). It is only in cases of mere contracts for the cultivation of land let that the deed, which might be called a *zar-i-peshgi*, would create a raiyati interest (*Ram Khelawan Rai v. Sumbhu Rai*, 2 C. W. N., 758). But a raiyat by taking

a *sar-i-peshgi* lease of land of which he was previously or was then put in possession as a raiyat, does not lose his raiyati status or divest himself of his right to acquire an occupancy right in land (*Ramdhari Singh v. Mackenzie*, 10 C. W. N., 351). A person may have originally acquired a large tract of land ostensibly with the object of cultivating it himself, or by his servants or members of his family, but may convert himself, so far, as third persons are concerned, into a rent receiver, and give those persons the right of remaining on the land as occupancy raiyats (*Mohesh Jha v. Manbharan Mia*, 5 C. L. J., 522). The definition of a tenure-holder and a raiyat in this section is not exhaustive, *ibid*; it was held by Rampini, C. J., in the case of *The Secretary of State v. Karuna Kant Chowdhuri*, 35 Calc., 82 : 11 C. W. N., 1053, F. B., that the definition of a tenure-holder is wide enough to include an *ijardar* of the profits of a *melu*. There is nothing in the policy of the law to prevent the creation of an intermediate tenure between a *Putnidar* and a *Darputnidar* (*Mudhusudan Saha Chowdhuri v. Debendra Nath Sarkar* 7 C. L. J., 23n.)

Farmers of Government estates when tenure-holders :—

“The farmer of an estate, which is the property of Government is a tenure-holder under the Bengal Tenancy Act, the payment which he makes being rent, as defined in section 3 (5), and not revenue. His lease cannot therefore be cancelled. It can only be determined by his ejection decreed in a regular suit, and a condition in his lease permitting cancellation without a suit could not be enforced [sections 66, 89, and 178 (1) (c)]. The farmer of an estate belonging to a recusant proprietor, on the other hand, takes the place of the proprietor in entering into an engagement with the Government, and thus pays land revenue instead of rent. He is not therefore a tenure-holder and his lease may be put an end to by cancellation on default, if it contains a stipulation to that effect (Bd. of Revenue’s C. O., No. 9 of Sept., 1893). (1)

Sub-section (4), clause (b). Purpose for which tenancy was acquired.—The definition of “raiyat” given in this section is not exhaustive, and there is nothing in it to exclude a person who has taken land for horticultural purposes (*Hari Ram v. Narsingh Lal*, 21 Calc., 129). A raiyat does not become a middleman simply because, instead of cultivating the land, he erects shops on it and takes profits from the shop-keepers (*Khajurunnissa v. Ahmed Rezah*, 11 W. R., 88). Where land has with the consent of the landlord ceased to be agricultural and the tenant has since built a homestead or used part of it for tanks or gardens, the nature of the tenure (*i.e.*, tenancy) is not thereby changed

(1) See also Board of Revenue’s Settlement Manual, of 1908, Part III, Chap. IX, pp. 762, 763 and pp. 199-200.

(*Prasanno Kumar Chaturji v. Jagannath Basakh*, 10 C. L. R., 25). But see *Mohesh Jha v. Manbharan Mia*, 5 C. L. J., 522. But the lessees of land leased for building proposes and for the establishment of a coal depot are neither tenure-holders, raiyats, nor under-raiyats, and lands demised for such purposes do not come within the purview of this Act (*Ranigunj Coal Association v. Jadunath Ghosh*, 19 Calc., 489).

Rights as a raiyat can be acquired under a trespasser.—Rights as a raiyat can be acquired, though the raiyat has been let into the land by a person who is found to have no title, and, therefore, to be a trespasser. It is immaterial whether the raiyat was let into the land before or after the passing of this Act (*Mohima Chandra Saha v. Hazari Paramanik*, 17 Calc., 45; *Binad Lal Prakash v. Kalu Paramanik*, 20 Calc., 708). But the tenant must have entered on the land under the *de facto* proprietor, who is not the real owner, in good faith (*Piari Mohan Mandal v. Radhika Mohan Hazra*, 8 C. W. N., 315); *Upendra Chandra Bhattacharya v. Pratap Chandra Pradhan*, 8 C. W. N., 320). See note to sec. 3 (3), p. 25.

Sub-section (5). Area of tenancy.—The owners of an indigo factory who have held land considerably in excess of the limit prescribed in sub-section (5) of this section, under successive leases for more than twelve years, are not raiyats, either “occupancy” or “non-occupancy,” within the meaning of the Act (*Bengal Indigo Company v. Raghubar Das*, 24 Calc., 272; I. R., 23 I. A., 158; 1 C. W. N., 83). The presumption arising under sub-section (5) is a rebuttable one and may be rebutted by the terms of the document creating the lease (*Surendra Nath Sen v. Baroda Kanto Sircar*, 10 C. W. N., clxiv). But it is not sufficiently rebutted by the fact that the kabulyat executed by the tenant is on a printed form intended for cultivators, or that in a receipt for rent given by the landlord to the tenant, the latter is described as a raiyat (*Gokul Mandar v. Padmanand Singh*, 29 Calc., 707; 6 C. W. N., 825).

The presumption arising under this section is a rebuttable one (*H. B. Dalgleish v. Damodar Narain*, 8 C. L. J., 533).

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Enhancement of rent. Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

- (a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or
- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Tenure-holders' rents may also be increased on the ground of increase in area—This section is founded on the provisions of cl 1, sec. 51 of Reg. VIII of 1793, which is repealed by this Act (see Sch. I). It must be read along with sec. 52 of this Act, which lays down that every tenant shall be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has previously been paid by him, and shall be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him ; so that the tenure-holders to whom this section applies, *viz.*, tenure-holders holding from the time of the Permanent Settlement, but not at a fixed rent, or fixed rate of rent, are liable to have their rents increased on the ground of an increase of area, as well as on

the grounds mentioned in this section. Tenure-holders and raiyats holding at fixed rents or fixed rates of rent from the time of the Permanent Settlement are liable to have their rents increased only on the ground of an alteration in the area of their tenures or holdings (section 50).

No notices of enhancement required.—The section does not require the issue of notices of enhancement, as the former law did. This is the result of the recommendation of the Rent Commission, who said : “ It will be important to mention that we have dispensed with the notice of enhancement which is required by the present law and which was also required by the old Regulations in force before 1859. Such a large percentage of enhancement cases have failed, because it was not found that the notice had been served, or because the notice was defective in form, that it has appeared to be highly expedient to do away with a detail, the practical result of which has been to delay and impede a decision of the real question at issue between the parties. We have accordingly made the institution of the enhancement suit to be notice to the tenant.” (Rent Commission Report, vol. I, p. 34, para 63).

Clause (b). Reductions of rent entitling landlord to enhance.—The third ground of enhancement mentioned in section 51 of Reg. VIII of 1793 was that the *talukdar*, by receiving abatements of his *jama*, had subjected himself to the payment of the increase demanded. It was held that a plaintiff was not entitled to enhancement under this clause, merely because the rent had become less by degrees (*Nabo Krishna Magumdar v. Tara Mani*, 12 W. R., 320), and that it was necessary for the *zamindar* expressly to state when and for what reason the *talukdar* had received an abatement of his *jama*, and had thereby subjected himself to the payment of the increase demanded (*Nabo Krishna Basu v. Mazamuddin Ahmad*, 19 W. R., 338).

Proof of existence of tenure at the time of the Permanent Settlement.—In a suit for arrears of rent at an enhanced rate, even if the defendants can show that they are dependent *talukdars*, sec. 51 of Reg. VIII of 1793 will not apply to them, unless they can distinctly prove that their tenure existed and was capable of being registered at the date of the decennial settlement (*Eshan Chandra Banurji v. Harish Chandra Saha*, 24 W. R., 146). But it is not necessary to show that it was “registered” at the time of the decennial settlement: it is sufficient to show that the tenure existed and was capable of being registered at that time (*Bama Sundari Dasi v. Radhika Chaudhrain*, 13 W. R., P. C., 11 ; 4 B. L. R., P. C., 8 ; 13 Moo. I. A., 248 ; *Nil Mani Singh v. Ram Chakravariti*, 21 W. R., 439). The fact of the mention of a tenure in a *jamabandi* paper prepared seven years before the decennial

settlement is presumptive evidence of its existence twelve years before the decennial settlement (*Romesh Chandra Datta v. Madhu Sudan Chakravartti*, 5 W. R., 252). It is not necessary that direct evidence should be given to prove the existence of a tenure before the permanent settlement; a presumption in favour of its existence arises from the proof of the existence of a tenure for a very long time, say from 1824 (*Ananda Chandra v. Kunja Behari Pal* 8 C. L. J., 171). On the other hand, the fact that a *taluk* is not mentioned in the decennial or quinquennial settlement as such, and that the lands are included in the decennial settlement as part of the *zamindari* does not afford any strong evidence against the existence of the *taluk*, for, being only a *shikmi taluk*, paying rent to the *zamindar*, the *talukdars* were not required to mention it, nor was it necessary for the *zamindar* to do so (*Wise v. Bhubanmayi Debi*, 10 Moo I. A., 174; 3 W. R., P. C., 5).

A decree of the Sudder Dewani Adalat in 1805 declared that a *taluk* was fit to be separated from the *zamindari*, of which it had originally been part, according to the provisions of section 5, Regulation VIII of 1793. The decree directed that until separation rent should be paid by the *talukdar* to the *zamindar* according to the *jama* already assessed upon the *taluk*, and that this revenue to be, on the separation being effected, deducted from that assessed upon the *zamindari*. Proceedings with a view to separation then continued, but litigation and delays ensued with the result that no separation had been effected when suits were instituted in 1882 and 1885, in which the holders of shares into which the *zamindari* had been partitioned claimed to enhance the rent of the *taluk*. It was held that the decree of 1805, acted upon for many years, was conclusive that the *taluk* was not dependent on the *zamindari*, but was an independent one within section 5, Regulation VIII of 1793 and that, therefore, the *zamindars* had no right of enhancement (*Hemanta Kumari Debi v. Jagadendra Nath Rai*, 22 Calc., 214; L. R., 21 I. A., 131).

Burden of proof.—A dependent *talukdar* has to establish his title by the strictest proof against one coming in by purchase at a sale for arrears of revenue (*Gopal Lal Thakur v. Tilak Chandra Rai*, 3 W. R., P. C., 1; 10 Moo. I. A., 183). Proof of existence of the tenure from the time of the decennial settlement is sufficient to bar a suit for enhancement, when the plaintiff is not an auction-purchaser: when the plaintiff is an auction-purchaser, he must show when he purchased, before he can insist upon direct proof of the existence of the tenure twelve years before the decennial settlement (*Romesh Chandra Datta v. Madhu Sudan Chakravartti*, 5 W. R., 252). In a suit for enhanced rent of a *taluk*, the existence of which as an ancient *taluk* is undoubted, and in which the only question is whether the rent is fixed or variable, the *onus* is first on

the defendant to prove that he has held at an uniform rent for 20 years, and (if the defendant prove so much), then, on the plaintiff to prove that the rent has varied since the Permanent Settlement (*Rashmoni Debya v. Haranath Rai*, 1 W. R., 280). When a tenure-holder has proved that his tenure is a dependent *taluk* within the meaning of the 51st section of Reg. VIII of 1793, the burden is cast upon the plaintiff *zamindar* to show that the rent is variable (*Bama Sundari Dasi v. Radhika Chaudhrain*, 13 Moo. I. A., 248 ; 4 B. L. R., P. C., 8 ; 13 W. R., P. C., 11). In a suit for enhancement of rent in respect of land which the defendant claims to hold as a dependent *taluk*, the *onus* is upon the *zamindar* to show that the land was included in the *zamindari* at the time of the Permanent Settlement (*Ahsanullah v. Bassarat Ali Chaudhri* 10 Calc., 920). A defendant having admitted that he is a tenant, the *onus* is upon him to show that his tenancy is such as he sets up, namely, a permanent tenancy at a rate which cannot be enhanced (*Khettra Krishna Mitra v. Dinendra Narain Rai*, 3 C. W. N., 202).

Tenures not held from the time of the Permanent Settlement.—The Act is silent as to the grounds on which the rent of tenures not held from the time of the Permanent Settlement and not held at a fixed rent or rate of rent can be enhanced. There would seem to be no legal restrictions on the enhancement of the rent of such tenures, except such as are imposed by the terms and conditions of the deeds under which the tenures are held. (See *Bama Sundari Dasi v. Radhika Chaudhrain*, 1 W. R., 339 ; *Kalidhan Banurji v. Romesh Chandra Datta*, 3 W. R., 172 ; *Bharat Chandra Aich v. Gour Mani Dasi* 11 W. R., 31 ; *Kasimuddee Khondkhar v. Nudi Ali Tarafdar*, 11 W. R., 164 ; *Satyanand Ghosal v. Haro Kishor Datta*, 15 W. R., 474).

✦ **A fractional co-sharer cannot enhance.**—This section is subject to the provisions of sec. 188 of this Act, which provide that joint landlords in doing anything which the landlord is under the Act required or authorized to do, must act collectively or by a common agent. Compare *Syama Charan Mandal v. Saim Mollah*, (1 C. W. N., 415).

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Extended to Orissa (Not., Oct. 17th, 1896).

Onus of proof.—In a suit for enhancement of rent of a tenure under sec. 7, it is for the plaintiff to start his case by proving that the existing rate was below the customary rate payable by persons holding

similar tenures in the vicinity, or that it was not fair and equitable, before the *onus* can be shifted to the defendant, to prove that the existing rent was fair and equitable (*Hem Chandra Chaudhuri v. Kali Prosanna Bhaduri*, 26 Calc., 832 ; 8 C. W. N., 1).

Limits of enhancement of rent of tenures.—The expression “customary rate” is substituted in this section for that of “pargana rate,” to be met with in the decisions under the Regulations, and which appears to be founded on the provisions of cl. 2., sec. 60 of Reg. VIII of 1793 and of sec. 5, Reg. XLIV of 1793. The Rent Commission proposed that the tenure-holders’ profits should in no case exceed thirty per cent, but that the enhanced rent should not be more than double the previous rent. These proposals were not accepted by the Legislature, and under the provisions of this section a tenure-holder is now entitled to a profit of at least 10 p. c., after deducting the expenses of collection, but he may get as much more as the Court thinks fair and equitable. As pointed out by the Rent Commission, the rule that a profit of 10 p. c. should be left to the tenure-holder is founded on the provisions of section 8 of Reg. V of 1812. “This section was repealed by Act X of 1859, but by some oversight no provision was substituted by this Act, though the principle, as being fair and equitable in itself and usual by reason of the provisions of the Regulation, was on occasions acted upon by the Courts after that Act was passed.” (Rent Commission Report, Vol. I, p. 27, para. 51). In *Ram Kumar Singh v. Watson & Co.*, 9 C. W. N., 334, it was held on a construction of the *kabulyat* executed by the defendants that their liability to pay an enhanced rent was not restricted by its terms. The rent assessed by the lower Court in this case amounted to 70 per cent. on the net assets after deducting collection charges, and, therefore, 30 per cent. was left as the tenure-holder’s net profits : but the rent was trebled. It was held that the rent thus settled was larger than what was fair and equitable.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual ; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Power to
order gradual
enhancement.

A similar provision is made in sec. 36 with regard to the enhancement of occupancy raiyats’ rents.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Rent once enhanced may not be altered for fifteen years.

Compare ss. 29 (c) and 37 (1) relating to enhancement of occupancy raiyats' rents.

Other incidents of tenures.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected :

Other incidents of tenures. Permanent tenure-holder not liable to ejection.

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Permanent tenures how created.—Tenures become permanent (1) by express provision of law, as in the case *patni* and other similar *taluks* ; (2) by contract ; and (3) by custom or the course of dealing therewith (Field's Rent law Digest, p. 25, art. 18).

Tenures permanent by contract.—A grant containing the words "from generation to generation" clearly creates an absolute and hereditary *mukarari* grant (*Himmat v. Sonit Koer*, 15 W. R., 549 ; 1 Calc., 391). The term "*patni taluk*" *prima facie* imports a hereditary tenure (*Tarini Charan Ganguli v. Watson & Co.*, 3 B. L. R., A. C., 437 ; 12 W. R., 413). The word "*taluk*" by itself in the absence of evidence to the contrary implies a permanent interest (*Krishna Chandra Gupta v. Safdar Ali*, 22 W. R., 326). A *mukarari istimrari* tenure is a permanent tenure (*Monoranjan Singh v. Lilanand Singh*, 3 W. R., 84 ; *Lakho Koer v. Hari Krishna Rai*, 3 B. L. R., A. C., 226 ; 12 W. R., 3). The use of the word "*istimrari*" by itself shows an intention that a lease shall be perpetual and implies its hereditary character (*Kuranakar Mahanti v. Niladhro Chaudhuri*, 5 B. L. R., 652 ; 14 W. R., 107). The word *mukarari* in a *sanad* does not necessarily imply perpetuity (*Government of Bengal v. Jafir Hussain Khan*, 5 Moo. I. A., 467 ; *Parneswar Pratab Singh v. Padmananā Singh*, 15 Calc., 342) ; but it may do so (*Bilash Muni Dasi v. Sheo Prasad Singh*, 8 Calc., 664 ; 11 C. L. R., 215 ; L. R.,

9 I. A., 33); and in order to decide whether a *mukarari* lease is hereditary or not, the Court must consider the other terms of the instrument under which it was granted, the circumstances under which it was made, and the intention of the parties (*Sheo Prasad Singh v. Kali Das Singh*, 5 Calc., 543). It may, however, be doubted whether the words "*mukarari istimrari*" mean permanent during the life of the person to whom the tenure is granted or permanent as regards hereditary descent (*Lilanand Singh v. Manoranjan Singh*, 13 B. L. R., 124). The words "*istimarari mukarari*" in a pattah granting land do not of themselves denote that the estate granted is an estate of inheritance (*Tulsi Prasad Singh v. Ram Narain Singh*, 12 Calc., 117; L. R., 12 I. A., 205), or a perpetual hereditary estate (*Beni Prasad Koeri v. Dudh Nath Rai*, 4 C. W. N., 274; 27 Calc., 156; L. R., 26 I. A., 216). The words do not *per se* convey an estate of inheritance, but such an estate can be created without the addition of any other words, the circumstances under which the lease was granted and the subsequent conduct of the parties being capable of showing the intention with sufficient certainty to enable the Court to hold that the grant was perpetual. (*Narsingh Dayal Sahu v. Ram Narain Singh*, 30 Calc., 883). See also *Agin Bind Upadhyaya v. Mohan Bikram Saha*, (30 Calc., 20; 7 C. W. N., 314). The absence of words importing the hereditary character of a tenure may be supplied by the evidence of long and uninterrupted enjoyment and descent from father to son. *Ismail Khan Mahomed v. Nani Gopal Mukerji* 8 C. L. J., 513; 7 C. W. N., 734. The words "*tikka mohito*" are not tantamount to *maurasi* or *istimrari* and do not confer a permanent or hereditary lease at a fixed rate (*Nafar Chandra Shaha v. Jui Singh Bharati*, 3 W. R., Act X, 144). If a grant be made to a man for an indefinite period, it enures generally speaking for his life-time and passes no interest to his heirs, unless there are some words showing an intention to grant a hereditary interest. That rule of construction does not apply, if the term for which the grant is made is fixed or can be definitely ascertained (*Lekhraj Rai v. Kanhya Singh*, 3 Calc., 210; L. R., 4 I. A., 223). A grant of a village for maintenance is *prima facie* resumable on the death of the grantee (*Beni Prasad Koeri v. Dudh Nath Rai*, 4 C. W. N., 274; 27 Calc., 156; L. R., 26 I. A., 216; *Rameshar Baksh Singh v. Arjun Singh*, L. R., 28 I. A., 1).

Tenures permanent by custom or course of dealing.—The *howlas* and *nim-howlas* of Bakarganj and the *jotes* of Rangpur are (by custom) hereditary tenures (*Haro Mohan Mukhurji v. Lalan Moni Dasi*, 1 W. R., 5; *Jugat Chandra Rai v. Ram Narain Bhattacharji*, 1 W. R., 126). So are the *surbarakari* tenures of Cuttack (*Sadanand Mahanti v. Nauratan Muhanti*, 16 W. R., 289; 8 B. L. R., 280).

In order to determine whether a pattah granted by a *samindar* conveys an estate for life only, or an estate of inheritance, it is necessary to arrive, as well as can be done, at the real intention of the parties, to be collected chiefly no doubt from the terms of the instrument itself, but to a certain extent also from the circumstances existing at the time of its execution, and further, from the conduct of the parties since its execution (*Watson & Co. v. Mohesh Narain Rai*, 24 W. R., 176). It may be shown, by evidence as to the nature of the enjoyment, what a grant in its origin it really was. This is in fact only an application of the more general maxim, *optimus interpret rerum usus*. Accordingly, the frequent transfer of an interest in a tank without any change in the terms of the holding or in the amount of rent paid, extending over more than 60 years, was held to prove that the interest was a permanent and transferable one (*Nidhi Krishna Basu v. Nistarini Dasi*, 21 W. R., 386). See also *Hari Das v. Upendra Narain Shaha*, (10 C. W. N., cxxviii.) Evidence of possession at a fixed and invariable rent anterior to the decennial settlement and that for upwards of a century the *taluk* has been treated as hereditary and as such has descended from father to son and been the subject of purchase is sufficient to justify the inference that it is of a permanent nature (*Gopal Lal Thakur v. Tilak Chandra Rai*, 10 Moo. I. A., 191; 3 W. R., P. C., 1). Such possession even for 60 years is sufficient and justifies the presumption, which is not rebutted merely by a provision in the *kabulyat* that on a transfer by assignment, one-fourth of the purchase money should be paid to the landlord (*Nemai Chandra Bose and others v. Mohamed Basir and others*, 9 C. L. J., 475). If a pattah does not contain the term *mukarari*, or equivalent terms of limitation, as "from generation to generation," it is not *prima facie* to be assumed to grant a *mukarari istimrari* or perpetual tenure, but evidence of long and uninterrupted enjoyment at a fixed unvarying rent will supply the want of words of limitation in such pattah (*Dhanpat Singh v. Guman Singh*, 11 Moo. I. A., 433, see p. 466). The absence of words of limitation in a pattah which creates an *istimrari* tenure may be supplied by evidence (1) of long and uninterrupted enjoyment at a fixed rent; and (2) of the descent of the tenure from father to son, whence its hereditary character may legally be presumed (*Sattosaran Ghosal v. Mahesh Chandra Mitra*, 12 Moo. I. A., 263; 2 B. L. R., P. C., 23; 11 W. R., P. C., 10). See also *Din Dyal Singh v. Hira Singh*, (2 N. W. P., H. C. Rep., 338). The omission of words of inheritance in a *sanad* is not a sufficient proof *per se* that such grant was not hereditary, when evidence of long and uninterrupted usage shows that the lands have descended from father to son for more than a hundred years (*Kuldip Narain Singh v. The Government*, 14 Moo. I. A., 247; 11 B. L.

R., 71). The absence of the words "*maurasi mukarari*" do not necessarily indicate that it was not the lessor's intention to grant a permanent lease (*Promoda Nath Rai v. Srigobind Chaudhuri*, 32 Calc., 648). When a pattah is void as against a person and not voidable only, the mere receipt of rent by him, though of the same amount as that fixed by the pattah, would not have the effect of confirming the pattah in its entirety (*Beni Prasad Koeri v. Dhud Nath Rai*, 4 C. W. N., 274 : 27 Calc., 156 : L. R., 26 I. A., 216.)

These cases seem to establish that to justify a Court in presuming in the absence of direct evidence of a tenure being of a permanent nature, that it is of such a character, there must be evidence (1) of long and uninterrupted enjoyment, (2) of fixity of rent, and (3) of the lands having descended from father to son, or having been transferred by purchase. In some cases it has been expressly laid down that mere long possession by itself is not sufficient to justify a Court in making such a presumption. Thus, in *Sheo Dyal Puri v. Mahabir Prasad*, (10 W. R. 477 : 2 B. L. R., App., 8), it was said that possession by a tenant does not in itself lead to any inference as to his character. The fact of his having occupied the land and paid rent for twelve or even twenty years is equally consistent with his being a tenant-at-will, farmer, or a *mukararidar*. A Court is not bound, as a matter of law, to presume that a tenure is a permanent one inereely from the fact of long possession of the land (*Nobin Chandra Datta v. Madan Mohan Pal*, 7 Calc., 697). See also *Bai Ganga v. Dullabh Purag*, (5 Bom. H. C. Rep., 179) ; and *Endar Lala v. Lala Hari*, (7 Bom. H. C. Rep., A. C., 111). When there is no evidence of a grant of perpetuity, time and undisturbed enjoyment cannot ripen the holding into a species of ownership, and when the origin of the tenancy is shewn at a rent twice increased, and paid down to the commencement of the suit, length of enjoyment coupled with the payment of rent can give no greater force to the tenant's right than it originally possessed. A holding for a long period of years and a payment of rent to the *zamindar* merely establish a tenancy from year to year (*Vasudev Patrudu v. Sanyasiraz Peddabaliyara Simhulu*, 3 Mad. H. C. Rep., 1). Long and continued possession at a low and unvaried rent is not sufficient to suggest the inference that an agreement had been made between the parties that the tenant should hold a permanent tenure (*Secretary of State v. Lachmessar Singh*, 16 Calc., 223 : L. R., 16 I. A., 6). A tenure in perpetuity cannot be established merely by evidence of long possession at an invariable rent, unless it appears that such tenancy may be so acquired by local usage (*Narayanbhat v. Davlata*, 15 Bom., 647 : *Babaji v. Narayan*, 3 Bom., 340). On the other hand, continuous payment of rent for a hundred years has been held to give rise to

a presumption that the tenant held under a *maurasi* title (*Brajo Nath Kundu v. Lakhi Narayan Addi*, 7 B. L. R., 211), and possession for nearly a hundred years at presumably a fixed rent, to justify the conclusion that the tenant had a permanent and transferable interest in his tenure (*Dunne v. Nabo Krishna Mukhurji*, 17 Calc., 144.) See also *Naba Kumari Debi v. Behari Lal Sen*, (34 Cal., 902, P. C.) where an uninterrupted possession at an uniform rent with intermediate successions and sales was held to lead to an inference of permanence. In *Watson & Co., v. Radha Nath Singh*, (1 C. L. J., 572), which was a suit for enhancement of the rent of a tenure, it was proved that (1) the tenancy was created for purposes of reclamation, but when it originated could not be determined; (2) the tenancy was not limited in duration and had descended from father to son, and from son to grandson; (3) that the rent had never been altered; (4) that excess lands reclaimed from time to time had been included in the tenancy, and rent had been assessed thereon, but at each settlement the rent assessed at the previous settlement had been left untouched; (5) that the rent was progressive, the full amount being reached in the fourth year and the parties agreeing that the lessee should thenceforth continue to pay the full amount; and (6) that the lessee was entitled to hold excess lands at a rate fixed in the contract. *Held*, that from these circumstances the inference might legitimately be drawn that the tenure was permanent, the rent had been fixed in perpetuity, and was not liable to be enhanced. A farmer may acquire by prescription the right of a permanent tenant by setting up such higher right adversely to the zemindar, without acquiring any permanent rights to the sub-soil (*Bagdu Manjhi v. Durga Prasad Singh*, 9 C. W. N., 292). See note to section 182—“*Ejectment of tenant from homestead land.*”

Onus of proof.—When a tenant has admitted that he is a tenant, the *onus* is upon him to show that his tenancy is such as he sets up, namely, a permanent tenancy at a rate which cannot be enhanced (*Khetra Krishna Mitra v. Dinendra Narain Ray*, 3 C. W. N., 202). In a suit for ejectment by a purchaser at a revenue sale, the defendants claimed to hold the land as a subordinate *taluk*, which had been in existence and in the possession of themselves and their predecessors since the time of the permanent settlement. It was found as a fact that the tenure was in existence in 1798-99. *Held*, that, although in the first instance the burden of proof was on the defendants, yet it had been discharged by the proof of the defendants' long possession and of the fact that the *taluk* was in existence one hundred years ago (*Nityanand Rai v. Banshi Chandra Bhuiyan*, 3 C. W. N., 341). When a defendant alleges that he holds a permanent tenure, the burden of proving that

fact lies on him, and it is not for the plaintiff to show that he is not a tenure-holder but only a raiyat (*Nilmani Maitra v. Mathura Nath Joardar*, 4 C. W. N., clx : 5 C. L. J., 413). If a person sets up as against Government a permanent *tulukdari* right, it is incumbent on him to make out that case (*Prasanna Kumar Rai v. Secretary of State*, 26 Calc., 792 : 3 C. W. N., 695).

Ejection of permanent and temporary tenure-holders.—

In addition to the provisions of this section, which limit the grounds on which a permanent tenure-holder can be ejected, sec. 65 provides that no permanent tenure-holder can be ejected for arrears of rent. Section 89 lays down that no tenant can be ejected except in execution of a decree. Section 155 grants every tenant liable to ejection relief against it by requiring the landlord, before bringing a suit to eject him, to give the tenant notice of the misuse of the land or breach of contract complained of and an opportunity of remedying or paying compensation for the same. Under sec. 178, sub-sec. (1), cl. (c), no contract made either before or after the passing of this Act shall entitle a landlord to eject his tenant otherwise than in accordance with its provisions. A tenant holding under a lease of a permanent character has no power to make excavations of such a character as to cause substantial damage to the property demised, although by the terms of the lease he has power to make excavation. (*Girish Chandra Chando v. Sirish Chandra Das*, 9 C. W. N., 255).

When a landlord grants a permanent and heritable tenure in land, he has no estate left in him, unless he reserves to himself a right of re-entry or reversion, and even when the lease contains a clause restraining the lessee from alienation, the landlord cannot eject the tenant on a breach of this clause, unless the lease contains a clause giving him a right of re-entry, or provides that the lease shall be void in case of such breach (*Nil Madhub Shikdar v. Narattam Shikdar*, 17 Calc., 826 ; *Narayan Dassappa v. Ali Saiba*, 18 Bom., 693 ; *Madar Saheb v. Sannabawa*, 21 Bom., 195 ; *Srigobind Prosad v. Musst. Laljhari*, 13 C. W. N., ccxii). A stipulation in a *patni* lease that by reason of non-payment of rent by the *patnidar* he would forfeit his tenancy, is not valid (*Mahabat Aliv. Mahomed Faizullah*, 2 C. W. N., 455). But see note to s. 179.

Mineral rights.—The permanent tenure-holder is entitled to all under-ground rights unless there is a reservation to the contrary (*Sriram Chakrabarty v. Hari Narain Singh Deo*, 33 Cal., 54 ; *Shama Charan v. Abhiram*, 33 Cal., 511 : 10 C. W. N., 738 ; *Meghlal Panday v. Raj Kumar Thacoor*, 34 Cal., 358 : 11 C. W. N., 527).

Life tenants or Khorposhdars are not entitled to work mines which are not already open (*Prince Mohamed Buktyar Sha v. Rani Dhajumani*, 2. C. L. J., 20 : *Tituram Mukerji v. Cohen*, 33 Cal., 203 : 9 C. W. N., 1073 : 2 C. L. J., 408).

Reservation of mineral rights implies reservation of the right to go upon the land and work the minerals (*Rameswar Malia v. Ram Nath*, 33 Cal., 462).

Limitation.—The period of limitation, within which a suit for the ejectment of a tenure-holder on account of the breach of a condition of his contract for which he is liable to be ejected may be brought, is one year from the date of the breach (art. 1, Sched. III of this Act.)

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Transfer and transmission of permanent tenure.

Transferability of permanent tenures.—Among the provisions of this Act to which those of this section are subject is no doubt sec. 181, which provides that the incidents of *ghatwali* and other service tenures shall remain unaffected by it, and expressly prescribes that nothing in this Act shall confer a right to transfer or bequeath a service tenure, which could not before its passing be transferred or bequeathed. "Custom, usage and customary right" are also under sec. 183 unaffected by anything in this Act. Tenures, therefore, which before the passing of the Act were by custom non-transferable, as, for instance, *Surbarakari* tenures in Orissa, which, though hereditary, are not transferable without the consent of the *zamindar*, will continue to be so (see *Durjodhan Dass v. Chuya Dai*, 1. W. R. 322 ; *Kashi Nath Pani v. Lakhmani Prasad Patnaik*, 19 W. R., 99 ; *Dashorathi Mahapatra v. Rama Krishna Jana*, 9 Calc., 526 ; *Bhuban Puri v. Shama Nand De*, 11 Calc., 699 ; and *contra*, *Sudanando Mahanti v. Nauratan Mahanti*, 8 B. L. R., 280 : 16 W. R., 289).

Permanent tenures are under this section clearly transferable. A provision in a lease of a permanent tenure for forfeiture or re-entry in case of an assignment in violation of its terms would, therefore, be of no effect. In any case, such a provision would not have the effect of invalidating a sale in execution ; for, it is clear law in India, as in England, that a general restriction on assignment does not apply to an assignment by operation of law taking effect *in invitum*, as a sale under an execution (*Golak Nath Rai v. Mathura Nath Rai*, 20 Calc., 273).

Non-permanent tenures.—This section seems to import that non-permanent tenures were not to be regarded as transferable (*Hiramati Dassya v. Annada Prosad Ghose* ; per Maclean C. J.—7 C. L. J., 553).

Onus of proof of transferability.—As regards tenures which are not permanent, there is a ruling in the case of *Daya Chand Saha v. Anand Chandra Sen* (14 Calc., 382), in which it has been said that there is no presumption that any tenure held is not a transferable tenure, and a landlord who sues for *khas* possession on the ground that a tenure sold was not transferable must establish his case as an ordinary plaintiff. The subject matter of this suit appears, however, not to have been a “tenure” in the strict sense of the term, but a “holding,” and the rule laid down in this case was subsequently dissented from in respect to a raiyat’s holding in the case of *Kripamayee Debi v. Durga Govind Sarkar*, (15 Calc., 89). See note to sec. 26.

Sub-letting of permanent tenures.—Section 179 prescribes that nothing in this Act shall be deemed to prevent a holder of a permanent tenure in a permanently settled area from granting a permanent *mukarari* lease on any terms agreed on between him and his tenant.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

Voluntary
transfer of per-
manent tenure.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or [usufructuary] mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called “the landlord’s fee”) of the following amount, namely :—

(a) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure : provided that no such fee

shall be less than one rupee or more than one hundred rupees ; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees,

[together with the costs necessary for the transmission of the landlord's fee to the landlord.]

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee, [the costs necessary for the transmission of the same] and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be [transmitted] to, and the notice to be served on, the landlord [named in the notice] in the prescribed manner.

The word "usufructuary" before "mortgage" in sub-section (2) has been inserted by Act VIII of 1886. The words in heavy brackets have been added to and inserted in this section and the word "transmitted" has been substituted for "paid" by s. 5, Act I, B. C., of 1907, and Act I, E. B. C., 1908. The reasons for these changes and the corresponding changes in secs. 13 and 15 are explained in the report of the Select Committee on the Bill of 1905 as follows :

"It is essential that the landlord should receive notice of transfers under sections 12, 13, and 15 at the earliest possible opportunity. The present practice is that the landlord's fee is deposited with the Collector, by whom a notice is served on the landlord to come and claim the fee. This practice is not altogether in accordance with the terms of the law, which lays down that the Collector must cause the amount to be paid to the landlord. There is at present no provision for the costs of transmitting the fee. Time will, we think, be saved if the amount necessary for the transmission of the landlord's fee is paid by the transferee in the first instance, and sent with the fee to the Collector, who can thereupon send the fee by money order, or in such way as the Government by rule directs, to the landlord. We would protect the Collector from being held liable for paying the fee to the wrong person, by authorising him in all cases to pay it to the landlord named in the notice."

An addition has also been made to sec. 189, by s. 59, Act I, B. C., of 1907 and Act I, E. B. C., of 1908 empowering the Local Government to make rules to prescribe the manner in which landlord's fees shall be transmitted to the landlord.

Mortgage of permanent tenure.—The provisions of sec 59 of the Transfer of Property Act must be read subject to the provisions of this section and a mortgage of a permanent tenure can only be effected by a registered instrument (*Sashi Bhushan Basu v. Sahadeb Shaha*, 3 C. W. N., 499.)

Transfer of permanent tenure when complete.—The transfer of a permanent tenure is complete as soon as the deed of transfer is registered under the provisions of this section (*Krishna Ballabh Ghosh v. Krishna Lal Singh*, 16 Calc., 642). Although it certainly was the case before the Tenancy Act was passed that the Court always held that the landlord was entitled to look to his recorded tenant for all rent until he received due notice of the transfer, the present law, as explained by the decision in *Krishna Ballabh Ghosh v. Krishna Lal Singh*, appears to have altered that state of things ; for that decision lays down that the transferor is no longer liable for any rent accruing after his transfer is duly registered (*Chintamani Datta v. Rash Bihari Mandal*, 19 Calc., 17). But when the parties have contracted that no transfer shall be valid unless the transferee shall furnish security to the satisfaction of the landlord, and a transfer has been made, but no security, as stipulated for, has been furnished, then the landlord will not be bound to recognize the transferee, and the transferor is still liable for the rent (*Dinubandhu Rai. v W. C. Bonerjee*, 19 Calc., 774). And when a transfer of a tenure is only colourable and *benami*, such a transfer cannot discharge a transferor from liability to pay rent, even if the tenure was transferable and the transfer was made by a registered kobala (*Jai Govind Laha v. Mammotha Nath Banurji*, 33 Calc., 580).

Sub-divisional Officer.—By a notification, dated the 7th October, 1886, published in the *Calcutta Gazette* of the 13th *idem*, Part I, p. 1192, all officers in charge of sub-divisions were vested with powers of a Collector for the purpose of discharging the functions referred to in secs. 12, 13, and 15 of the Act.

Mode of service of notice of transfer and succession.—The mode of service of notices of transfer and succession under ss. 12, 13, 15 and 18 is prescribed in rule 1, Chapter V of the Government Rules under the Tenancy Act. (See Appendix I).

The object of sub-sections (2) and (3), sec. 12 is to give notice of a transfer to the landlord and this object may be fulfilled *aliunde* for instance by a suit against the landlord on the basis of the transfer (*Bandez Khan v. Kedar Nath*, 11 C. W. N., cxliv).

Rules of the Registration Department.—The rules of the Registration Department for the registration of documents under this section, as revised by Govt. Not. No. 949P., dated March 21st, 1898 will be found in Appendix IV.

Act I, B. C., of 1903.—The collection of the landlord's fee by the Registering officer is under the terms of the section imperative. In certain instances owing to a misconception, the landlord's fees were not collected. Hence, Act I, B. C., of 1903 was passed to validate such transfers. The portion of the Act intended to effect this object will be found printed after sec. 18 at pp. 82-84. A decree made before the passing of Bengal Act I of 1903, but pending in appeal at the commencement of that Act is governed by sec. 1 of that Act as not being final (*Piari Mohan Pal v. Arshid Ali*, 8 C. W. N., 239.) A transfer by a registered release was complete as soon as the document was registered and the non-payment of landlord's fee was cured by Section 1, Act I of 1903 B. C., (*Hemendra Nath Mukherji v. Kumar Nath Ray*, 12 C. W. N., 478).

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, [or when a mortgage of a permanent tenure, other than a usufructuary mortgage thereof, is foreclosed,] the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, * (order XXI r. 92, Act V of 1908) [or making a decree or order absolute for the foreclosure,] require the purchaser [or mortgagee] to pay into Court the landlord's fee prescribed by the last foregoing section, [together with the costs necessary for its transmission to the landlord], and such further fee for service of notice of the sale [or final foreclosure] on the landlord as may be prescribed.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.
*XIV of 1882.

(2) When the sale has been confirmed, [or the decree or order absolute for the foreclosure has been made,] the Court shall send to the Collector the landlord's fee, [the costs necessary for the transmission of the same] and a notice of the sale [or final foreclosure] in the prescribed form, and the Collector shall cause the fee to be [transmitted] to, and the notice to be

served on, the landlord [named in the notice] in the prescribed manner.

The words in light brackets in this section have been inserted by Act VIII of 1886. The words in heavy brackets have been inserted and added by Act I, B. C., of 1907, and Act I, E. B. C., of 1908.

Effect of non-payment of landlord's fee.—Before the passing of Act I, B. C., of 1903, printed at pp. 82-84, it was held that when a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof and the landlord's fee prescribed by section 12 is not paid before the confirmation of the sale, the sale is invalid (*Babar Ali v. Krishna Manini Dasi*, 26 Calc., 603 : 3 C. W. N., 531). One of the principal objects of Act I, B. C., of 1903 was to supersede this ruling.

In another case, also decided before the passing of Act I, B. C., of 1903, in which the landlord's fee had not been paid, and the sale had been confirmed, and in which the decree-holder who had purchased the property subsequently applied to be allowed to pay in the landlord's fee and to have a fresh certificate of sale given to him, and this application was acceded to, it was held on appeal to the High Court, that the order of the Court below was correct (*Mohesh Chandra Das v. Hari Mohan Chakravarti*, 7 C. W. N., 388). In *Mohim Chandra Bhattacharji v. Ram Lochan De*, (7 C. W. N., 591), it was pointed out that it was only the landlord who could object on the ground of the non-payment of the fee, and that its non-payment could not affect the judgment-debtor's position, who had no right to raise such an objection. It was also held that the question was one under s. 244, C. P. C., so an appeal lay against an order passed on such a question.

Transfer of patni and dar-patni taluks.—*Patni taluks* are not affected by the provisions of the section, being specially saved from its operation by section 195, clause (e), of this Act. A *zamindar* or other superior of a *patni taluk* is therefore entitled to refuse to recognise the transfer of a *patni taluk* until the rules laid down in ss. 5 and 6 of Reg. VIII of 1819 have been complied with (*Gyanada Kantho Rai v. Bramomoyi Dasi*, 17 Calc., 162). But the purchase of a share of a *patni* without the landlord's consent is not void (*Aosab Ali v. Bissessari Dasya*, 1 C. L. J., 18 n). The *patni* right over a specific area lying within a *patni taluk* is transferable (*Mudhab Ram v. Doyal Chand Ghosh*, 25 Calc., 445 ; 2 C. W. N., 108). But the provisions of section 13 of the Tenancy Act apply to the sales of *dar-patni taluks* in execution of decrees, as the provisions of section 195, clause (e), apply only to enactments relating to *patnis* properly and strictly so called, and must be treated as

excluding those which relate to tenures, which though resembling *patnis*, as *dar-patnis*, &c., are not strictly *patnis*, not possessing all the qualities of them (*Mahomed Abbas Mandal v. Brajo Sundari Debia*, 18 Calc., 360). A suit to compel the registration of the names of *sepatnidars* in the *sherista* of their landlords the *darpatnidars*, is not maintainable either under ss. 5 and 6 of the Reg. VIII of 1819 or under the Bengal Tenancy Act (*Moti Lal singh v. Omar Ali*, 2 C. W. N., clxxx). A *patni* interest created after the passing of the Transfer of Property Act is determined on the purchase of the same by the zaminder, even at a sale held in execution of a decree (*Promotho Nath Mitra v. Kali Prasanna Chaudhuri*, 28 Calc., 744).

When the sale of a *patni* under Reg. VIII of 1819 is subsequently set aside, the zamindar is entitled to rent from the *patnidar* for the period intervening between the sale and its reversal. If the *patnidar* has been dispossessed by the auction-purchaser during the period, he will be entitled to mesne profits from the latter (*Amrita Sikhar Banurji v. Bijai Chand Mahtab*, 4 C. L. J., 547).

Limitation.—There is no limitation for an application to deposit the landlord's fee and for the confirmation of the sale and the granting of the sale certificate (*Krishna Chandra Datta v. Anukul Chandra Chakravarti*, 5 C. W. N., 190).

Section 14 has been repealed by Act I, B. C., of 1907 and Act I, E. B. C., of 1908. The object of the framers of the Bengal Tenancy Act, in inserting section 14, was to facilitate the registration of tenures by the Collector. Since all idea of such registration has been abandoned, the retention of the section is unnecessary.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by the section 12, [together with the costs necessary for its transmission to the landlord], and the Collector shall cause the landlord's fee to be [transmitted] to, and the notice to be served on, the landlord [named in the notice] in the prescribed manner.

Succession to permanent tenure.

The words in brackets have been inserted in the section by Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

It is the duty of persons succeeding by inheritance to a permanent tenure to notify the succession and it is not the duty of the superior landlord to find out who all the heirs of the deceased tenure-holder are. Accordingly, when a person is admittedly one of the heirs and as such in possession and liable for the rent, he cannot defeat a landlord's suit for rent by showing that there are other heirs equally liable, unless possibly he goes further and shows that their names have been notified to the landlord as successors of the original holders or that they have been paying the rent and getting receipts as successors (*Khettro Mohan Pal v. Pran Krishna Kubiraj*, 3 C. W. N., 371).

In a suit brought by *patnidars* on the death of the last owner for arrears of rent which accrued due before his death, the defence of the *dar-patnidar* was that, as the plaintiffs had not complied with the terms of this section, the suit was not maintainable. *Held*, that as the plaintiffs did not claim the rent as the holders of the tenure, but as the representatives of the holder or of their father, the rent became an increment to the estate of the father and therefore the suit was maintainable (*Sheriff v. Jogemaya Dasi*, 27 Calc., 535).

Payment of landlord's fees—Notice-givers under this section should pay the landlord's fees direct into the Treasury (Bd. Cir., No. 4, June, 1898).

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice, [fees and costs] referred to in the last foregoing section.

Bar to recovery of rent pending notice of succession.

The words in brackets have been substituted for the words "and fees" in this section, by Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

Sections 15 and 16 apply to *patni* tenures.—Sections 15 and 16 apply to *patni* tenures, notwithstanding the provisions of sec. 195 (e). The object of section 195 (e) is that nothing in the Bengal Tenancy Act shall interfere with the *patni* law in respect of *patni* tenures, but that in other respects the Bengal Tenancy Act shall be held to apply as supplementing the *patni* law (*Durga Prasad Bandopadhyaya v. Brindabun Rai*, 19 Calc., 504).

Sections 15 and 16 do not have retrospective effect.—Sections 15 and 16 do not have retrospective effect and do not apply in a case in which the succession opened out before the Tenancy Act came into effect (*Profullah Chandra Basu v. Samirudin Mandal*, 22 Calc., 337).

Section 16 bars recovery of rent, but not institution of suit.—Section 16 does not preclude a party from instituting a suit for rent, notwithstanding that the Collector has not received the notice and the fees referred to therein, but it is a bar to the plaintiff's obtaining a decree before the notice and the fees are received by the Collector. The words "recover by suit" do not, however, mean "realise by suit," and the section is not intended to bar merely the actual realization of the money by the plaintiff. They bar his obtaining the decree (*Kalihar Ghosh v. Umai Patwari*, 24 Calc., 241 : 1 C. W. N., 98). When on the death of one *shebait*, another *shebait* succeeds to a permanent tenure and does not give a notice of succession to the landlord, and does not ask for an opportunity to comply with the requirements of sec. 15, sec. 16 is an effective bar to the recovery of a decree for rent (*Mabatulla Nasya v. Nalini Sundari Gupta*, 10 C. W. N., 42 : 2 C. L. J., 377).

No certificate required for collection of arrears of rent due to estate of deceased.—Under sub-section 2, section 4, of Act VII of 1889, (The Succession Certificate Act), the word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes. Arrears of rent due to the estate of a deceased person can, therefore, be collected without the production of a certificate under the Act (*Nogendro Nath Basu v. Satadulbashini Basu*, 3 C. W. N., 294 ; *Ranchordas v. Bhagubhai*, 8 Bom., 394).

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of
and succession
to, share in per-
manent tenure.

Rights and liabilities of transferee of part of tenure.—Section 88 provides that a division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on a landlord, unless it is made with his consent in writing. Subject to these provisions, an heir, as well as a transferee, even of a part of a permanent tenure, is entitled to compel the landlord to recognise him under secs. 15 and 17 of this Act (*Ananda Kumar Naskar v. Haridas Haldar*, 27 Calc., 549). A landlord is not bound to recognize any sub-division of a tenure, unless the provisions of ss. 12 and 17 have been strictly

complied with (*Ram Mayi Dasi v. Rupai Paramanik*, 1 C. L. J., 41n). Although the transferee of a fractional share of a *patni* cannot enforce registration of his name on payment of the necessary fee and tender of the requisite security, yet the transfer is not altogether void, and he is liable for the rent jointly and severally with the registered tenant, if the landlord chooses to recognize him as one of the joint holders of the *patni*, and he is also liable for the entire rent of the *patni* estate (*Saurendro Mohan Tagore v. Sarnamoyi*, 26 Calc., 103). A purchaser of a part of a tenure is not personally liable for rent which fell due before the date of his purchase; yet a suit for the rent of the whole tenure is not bad, merely because he was joined as a defendant. The transferee of a part of a tenure is jointly liable with his co-sharer for the rent; for, though the privity between the parties may be one of estate only, it is in respect of the whole of the tenure by reason of the indivisibility of the tenure without the landlord's consent (*Jagmaya Dasi v. Girindra Nath Mukhurji*, 4 C. W. N., 590). When the holder of a permanent tenure transferred a portion of it, and the transferee held that portion separately and was allowed to pay proportionate rent for the same to the landlord for a great many years; *held*, that upon sale by the transferee of that portion of the tenure, his liability for rent to the landlord ceased. This Act did not have the effect of subdividing the tenure (*Kali Sundari debia v. Dhurani Kanta Lahiri*, 10 C. W. N., 172: 33 Calc., 279).

When raiyats having permanent interests in a holding sold a portion of it and the transferees again sold a portion of their purchased interest to R, and R obtained settlement from the landlord; *held*, that, although the transferees did not register their names in the landlord's *serishta* and paid no rent from the date of their purchase, yet, as the landlord had notice of this purchase, he was bound under sec. 17 to sue the transferors and the transferees jointly, and a sale of the holding in execution of a decree for rent obtained against the transferors only did not affect the transferees' interest, (*Baistab Charan Chaudhuri v. Akhil Chandra Chaudhuri*, 11 C. W. N., 217).

Relinquishment of permanent tenures.—Permanent tenures once created cannot ordinarily be relinquished at the option of the holders. It is not open to a *patnidar* to throw up the *putni*, and so escape from the liability to pay rent. The contract, though not indissoluble, can be dissolved only by act of Court and after inquiry (*Hira Lal Pal v. Nilmani Pal*, 20 W. R., 383). The principle laid down in this case is applicable to all intermediate tenures (*Jadu Nath Ghosh v. Schoene Kilburn & Co.*, 9 Calc., 671). But if a permanent tenure is relinquished, and the *samindar* accepts the relinquishment, neither the

tenure-holder nor any one under him can reclaim it. A voluntary abandonment for a long period without any inevitable force major or other cause beyond the power of the holder must be considered to be equal to an express relinquishment (*Chandramani Nyabhushan v. Sambhu Chandra Chakravarti*, W. R., Sp. No., 1864, 270). Where a *mukarari* pattah reserved liberty to the tenants to relinquish the whole or any portion of the land demised and entitled them to a proportionate reduction of the rent at the specified rate for the extent of land that might be found on measurement to have been relinquished, and the lessees professed to relinquish a certain portion of the land, but were found to have retained 35 bighas out of the portion of the land alleged to have been surrendered, it was found that the possession by the lessees of a part of the land professed to be relinquished made the relinquishment and surrender invalid in law (*Ram Charan Singh v. Raniganj Coal Association*, 2 C. W. N., 697 : 26 Calc., 29 : L. R., 25 I. A., 210). A formal deed of re-conveyance of *dar-mukarari* interest is not necessary—the receipt of the money and the relinquishment of possession sufficiently showing what has become of the *dar-mukarari* interest (*Imambandi v. Kamleswari*, 14 Calc., 109 : L. R., 13 I. A., 160).

On failure of heirs permanent tenures escheat to the Crown.—In the case of a grant of an absolute hereditary *mukarari* tenure, on failure of heirs of the lessee, it escheats to the Crown, and does not revert to the original grantor or his heirs (*Sonnit Koer v. Himmat*, 1 Calc., 391 : 15 W. R., 549).

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of
holding at fixed
rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

- (a) shall be subject to the same provisions with respect to the transfer of, and succession to; his holding as the holder of a permanent tenure, and
- (b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Raiyats holding at fixed rates.—Section 18 of the Tenancy Act does not make all the incidents of a permanent tenure applicable to a raiyat holding at fixed rates, but makes only the provisions with respect to transfer and succession applicable (*Nilmani Maitra v. Mathura Nuth Joardar*, 4 C. W. N., cliv : 5 C. L. J., 413). Raiyats holding at fixed rates are also in the same position as tenure-holders as regards ejectment, except that, if a raiyat holding at a fixed rate of rent is liable to ejectment for a breach of a condition of his contract, that condition must be consistent with the provisions of this Act; whereas, in the case of a tenure-holder similarly liable to ejectment, the condition, the breach of which renders him liable to ejectment, need only be consistent with the provisions of this Act, if made after its commencement (*vide* sec. 10). Unless, then, it be otherwise provided in his contract, a raiyat holding at a fixed rate cannot be ejected for arrears of rent (sec. 65), though his crops may be distrained (sec. 121). He cannot be ejected except in execution of a decree : secs. 89 and 178 (1) (c). He has the same relief against forfeiture as a

tenure-holder (sec. 155), and a suit for his ejectment must also be brought within one year (art I, Sched. III).

E held 50 bighas of land for more than 12 years under a *jungalburi* lease, which provided for a progressive rate of rent and did not expressly provide that the interest of E was to be heritable or perpetual. It did not expressly exclude enhancement on any ground, but provided for enhancement on the ground of increase in the productiveness of the soil effected at the expense of the landlord; *held*, that E was not a raiyat holding at fixed rates (*Raj Kumar Sarkar v. Naya Chatu Bibi*, 31 Calc., 960). The word *kaimi* does not import fixity of rent (*Fazil v. Keramuddin*, 6 C. W. N., 916).

Onus of proof.—In a suit for enhancement of rent, the onus is on the defendant to prove that he is a raiyat at fixed rate (*Gudar Tewari v. Brij Nandan Prasad*, 5 C. W. N., 880).

Produce rents are not fixed rents.—In several rulings it has been held that a produce rent, which, though varying yearly with the varying amount of the yearly produce, is yet fixed as to the proportion it is to bear to such produce, is a fixed rent (see *Thakurani Dasi v. Bisheshar Mukhurji*, B. L. R., F. B., 326 : 3 W. R., Act X, 29; *Mitrajit Singh v. Tundan Singh*, 12 W. R., 14 : 3 B. L. R., App., 88; *Ram Dayal Singh v. Lachmi Narain*, 6 B. L. R., App., 25 : 14 W. R., 388; *Jatto Moar v. Basmati Koer*, 15 W. R., 479; and *Hanuman Prasad v. Kaulesar Pandey*, 1 All., 301). On the other hand, the contrary was held in *Yakub Hussain v. Wahid Ali* (4 W. R., Act X, 23) and *Thakur Prasad v. Mahomed Bakir* (8 W. R., 170). The framers of this Act were of opinion that produce rents were not fixed rents; for they omitted from the Act a sub-section to section 50, which it was at first proposed to introduce, providing that, when a raiyat paid a fixed produce rent, the rent or rate of rent should not be deemed to have varied merely by reason of the amount paid having varied from year to year. Sir Stuart Bayley in explaining the omission of the proposed sub-section, said:—“It seemed clear to us, that where the rent is paid in kind, although the proportion of the gross produce remains the same, yet, by a self-acting machinery this very fact discounts the rise in prices, and rents are thus of necessity enhanced or reduced as prices rise or fall. There is here no room, therefore, for the presumption.” (Selection from papers relating to the Bengal Tenancy Act, 1885, p. 421).

Transferee of share of holding at fixed rates entitled to be recognised as a tenant.—A person who has purchased a share in a *mukarari* holding and has given notice of the transfer to the landlord and has paid the landlord's fee is entitled, notwithstanding the provisions

of sec. 88 of this Act, which provide that the division of a tenure or holding shall not be binding on a landlord without his consent in writing, to be regarded as one of the persons who own and possess the holding in question. Sections 17 and 18 of the Bengal Tenancy Act recognize the transfer of a share of a holding and entitle the transferee to claim to be regarded as one of the tenants in respect of the holding. In these circumstances a decree in a rent suit, brought only against the former tenant of a *mukarari* holding after he had transferred a share in the holding, cannot be regarded as a valid and binding decree against the transferee, and a sale held in execution of such a decree cannot affect his rights (*Mohesh Chandra Ghose v. Sorada Prasad Singh*, 21 Calc., 433).

Guzastha and Gorabandi holdings.—*Guzastha* holdings are referred to in the following rulings :—*Jatto Moar v. Basmati Koer*, 15 W. R., 479 ; *Tetra Koer v. Bhanjan Rai*, 21 W. R., 268 ; *Lal Sahu v. Deo Narain Singh*, 3 Calc., 781 ; 2 C. L. R., 294. According to these rulings they may be either occupancy rights or holdings at fixed rates. According to the report of the Patna conference, however, *guzasthadars* are raiyats holding at fixed rates (Govt. of Bengal Report, 1884, Vol. II., P. 81). *Gorabandi* holdings are spoken of in the following cases :—*Lilanand Singh v. Nirpat Mahtan*, 17 W. R., 306 ; *Buti Singh v. Murat Singh*, 20 W. R., 478 ; 13 B. L. R., 284, note ; and *Chatturbhuj Bharti v. Junki Prasad Singh*, 4 C. L. R., 298. In this last cited case it was said that there are no decided cases to show that *gorabandi* rights are more extensive than occupancy rights, or that they are transferable. The Bhagalpur conference, however, reported that the term *gorabandi* is now used and understood by the raiyats to mean a raiyati holding at fixed rates (Govt. of Bengal Report, 1884, Vol II, P. 113).

Bengal Tenancy (Validation) Act, 1903.—The first portion of this Act (I, B. C., of 1903) which is closely connected with the preceding sections 12, 13, 17 and 18 is printed below.

BENGAL ACT NO. I OF 1903.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 25TH
FEBRUARY, 1903.]

*An Act to validate certain transfers, made under the
Bengal Tenancy Act, 1885, of permanent te-
nures and holdings at fixed rents or fixed*

VIII of 1885.

rates and of shares in the same ; and to amend section 106 of that Act.

WHEREAS doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17, VIII of 1885. and 18 of the Bengal Tenancy Act, 1885, as regards the payment of the prescribed landlord's fee, and the effect of the non-payment of such fee ;

And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid ;

And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing ;

And whereas the said Act having been passed by the Governor General of India in Council, the sanction of the Governor General has been obtained under section 5 of the Indian Councils Act, 1892, to the passing of this Act ;

It is hereby enacted as follows :—

1. No transfer which has heretofore been made or which may hereafter be made under section 12, section 13, section 17 or section 18 of the Bengal Tenancy Act, 1885, of a permanent tenure, or of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said sections 12 or 13 has not been paid :

Validation of transfers of tenures and holdings and shares in the same. VIII of 1885.

Provided always that, subject to the *Explanation* following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee, shall not bar a suit for rent which became payable subsequently to such claim.

2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement of this Act,

Realization of
fee when left
unpaid.

or within two years of the date of registration of the document effecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee, if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

3. Nothing in section I shall be deemed to affect the provisions of section 88 of the said Bengal Tenancy Act, 1885.

Saving of sec-
tion 88.

Object of the Bengal Tenancy (Validation) Act, 1903. The objects of the above Act, which received the assent of the Governor General of India in Council on the 19th February, 1903, are fully explained in the Statement of Objects and Reasons, which is as follows :—

“The first object of this Bill is to validate transfers of shares in tenures and holdings, at fixed rates, made in past years by registered documents and by sales in execution of decrees of Courts without the payment in either case of the landlord's fees prescribed by section 12 of the Bengal Tenancy Act VIII of 1885,

Section 12 of the Bengal Tenancy Act prohibits Registering Officers from registering any instrument purporting or operating to transfer a permanent tenure, unless the prescribed landlord's fee is paid to them for transmission to the landlord. Section 17 of the Act declares that the said section 12, among other sections, shall apply also to the transfer of a share in a permanent tenure. In the year 1888, in consequence of the provisions of section 17 having been overlooked, Registering Officers were instructed not to receive the prescribed fee in the case of instruments transferring a share in a permanent tenure. These erroneous instructions extended also to the case of instruments transferring a share in the holding of a raiyat enjoyed at a rent or rate of rent fixed in perpetuity. The instructions were not withdrawn till the 19th of September, 1899. Meanwhile numerous transfers of shares in such tenures and holdings were registered without payment of the prescribed landlord's fee.

Section 13 of the Act directs the Civil Courts, before confirming the sale of a permanent tenure in execution of a decree, other than a decree for arrears of rent, and before making a decree or order absolute for the foreclosure of a mortgage of a permanent tenure, to require the purchaser or mortgagee to pay the prescribed landlord's fee for transmission to the landlord. The fact that section 17 makes section 13, among other sections, applicable to shares in a permanent tenure, has frequently been overlooked, and it is believed that numerous sales and foreclosures of shares in permanent tenures and shares in holdings at fixed rates have been effected under the Act without payment of the fee in question.

To obviate the oversights both of the executive authorities and of the Civil Courts above explained, it is considered expedient to legislate on the subject, by declaring that the transfers, sales and foreclosures mentioned above shall not be deemed to be invalid merely on the ground that the landlord's fee was not paid at or before the date of the transaction.

Section 18 of the Tenancy Act deals with the transfer of and the succession to raiyats' holdings held at a rent, or rate of rent, fixed in perpetuity. There is no provision in this section, or in succeeding sections, expressly placing the transfer of, or succession to, a share of such a holding on the same footing as the transfer of a share in a tenure is placed by section 17."

CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS
AND LANDLORD'S FEES.

This chapter has been introduced
by s. 8, Act I, B. C., of 1907,
and applies only to the
province of Bengal

EASTERN BENGAL & ASSAM.

SEC. 8, ACT I, E. B. C., OF 1908.

18A. Nothing contain-
ed in any
instrument of
transfer to
which the
landlord is not a party
shall be evidence against
the landlord of the perma-
nence, amount or fixity of
rent, area, transferability
or any incident of any te-
nure or holding referred
to in such instrument.

18B. The acceptance
by a landlord
of any land-
lord's fee
payable under Chapter
III or Chapter IV in
respect of any tenure or
holding shall not operate—

“18A. Notwithstand-
ing anything
contained in
section 13 of
the Indian
Evidence Act, nothing
contained in any instru-
ment of transfer to which
the landlord is not a party
shall be evidence against
the landlord of the per-
manence, the amount or
fixity of rent, the area,
the transferability or any
incident of any tenure or
holding referred to in
such instrument.”

The words inserted before “noth-
ing contained” are inserted in the
new section 18A in order to make
it more clear that the intention is
to bar the operation of sec. 13 of
the Evidence Act in such cases.
Rep. Sel. Com.

(a) as an admission as to the permanence, amount or fixity of rent, area, transferability or any incident of such tenure or holding, or

(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

The object of these new sections is thus explained in the Notes on Clauses to the Bengal Tenancy (Amendment) Bill, 1906.

"The working of sections 12 to 17 of the present Act, relating to the transfer of permanent tenures, is not satisfactory. They induce tenants to register transfers of tenures which are not really permanent, in the hope that the acceptance of the fee by the landlord will operate as an admission of the permanence and transferability of the tenure. The landlords, on the other hand, are reluctant to accept the fees, and the result is that a very large amount of unclaimed fees has accumulated in different districts in the province. This state of things is not only

"18B. The acceptance ^{Saving as to acceptance of landlord's fees.} by a landlord of any landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

(a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or

The changes are verbal : "as to" changed for "of" : The definite article "the" is introduced before the words "amount," "area" and "transferability" to make the intention clearer.

(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof."

a source of embarrassment to Government, but also creates doubts and difficulties in regard to the position of the transferees of tenures. It is hoped that the amendments now proposed will overcome the reluctance of landlords to accept the fees in the case of tenures which are really permanent, and that tenants will be deterred thereby from registering transfers of tenures which are not of this character.

The same considerations apply to the transfer of, and succession to, holdings at fixed rents or rates of rent, and under section 18 (a) of the Act, these are governed by the same conditions. Clauses 5 and 6 have been so framed as to make the proposed amendments applicable to the case of holdings at fixed rents or rates of rent. A clause has also been added to sec. 189, empowering the Local Government to *prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 and 18 clause (a), may be declared to be forfeited, and the mode in which such fees when so forfeited shall be dealt with.*"

18C. All landlord's fees paid under Chapter III or Chapter IV which are held in deposit on or after the commencement of the Bengal Tenancy (Amendment) Act, 1907, may, unless accepted or claimed by the landlord within

Forfeiture of unclaimed landlord's fees.

“18C. All landlord's fees paid under Chapter III or Chapter IV, which are held in deposit on or after the commencement of the Eastern Bengal and Assam Tenancy (Amendment) Act, (I of 1908), may, unless accepted or claimed by the

Forfeiture of unclaimed landlord's fees.

three years from such commencement or from the date of the service of the notice prescribed in section 12, section 13 or section 15 (as the case may be), whichever is later, be forfeited to the Government.

landlord within three years from such commencement or from the date of the service of the notice prescribed in section 12, section 13 or section 15 (as the case may be), whichever is later, be forfeited to the Government."

There is no provision in the Act for the disposal of unclaimed fees. As these have accumulated, and in order to expedite claims to fees due, thus freeing the district establishments from much extra work, Government is now given power to deal with them in such manner as it thinks fit.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

19. (1) Every raiyat who immediately before the commencement of this Act [or the Bengal Tenancy (Amendment) Act, 1907,] has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act, [or the Bengal Tenancy (Amendment) Act, 1907,] comes into force, have a right of occupancy in that land.

General.
Continuance of existing occupancy-rights.

EASTERN BENGAL & ASSAM.

“ 19. (1) Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

[(2) The exclusion from the operation of this Act, by a notification under sub-section (3) of section 1, of any area constituted a Municipality under the provision of the Bengal Municipal Act, 1884, or

(2) The exclusion from the operation of this Act by a notification under sub-section (3) of section (1) of any area constituted a Municipality under the provisions of the Bengal Municipal Act, (III of 1884), or of any part of such area, shall not affect any right, obligation or liability previously acquir-

of any part of such area, or the inclusion of any area in the town of Calcutta by notification under section 637 of the Calcutta Municipal Act, 1899, shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area.]

ed, incurred or accrued in reference to such area."

In clause 1 the words "or the Bengal Tenancy (Amendment) Act, 1907," and in clause 2 the reference to the Calcutta Municipal Act, 1899, as in the Bengal section, have been omitted for obvious reasons.

Extended to Orissa, (Not., Sept., 10th, 1891).

The words in brackets have been inserted and added by Act I, B. C., 1907. They are intended to preserve existing rights and obligations in areas which under the amended provisions of section 1 may be excluded from the operation of the Bengal Tenancy Act by the Local Government or may be excluded from or included, in the limits of the town of Calcutta.

Acquisition of occupancy-rights under the former rent law.—Under sec. 6 of Act X of 1859, and sec. 6 of Act VIII, B. C., of 1869, every raiyat who had cultivated or held land for twelve years had a right of occupancy in the land so cultivated or held by him, whether it was held under a pattah or not, so long as he paid the rent payable on account of the same, but this rule did not apply to *khamar*, *nij-jote* or *sir* land belonging to the proprietor of the estate or tenure and let by him on lease for a term, or year by year, nor, as regards the actual cultivator, to land sub-let for a term, or year by year, by a raiyat having a right of occupancy. The holding of the father or other person from whom a raiyat inherited was to be deemed the holding of the raiyat within the meaning of the section. Section 7 of both Acts further provided that nothing in section 6 should be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a raiyat, when it contained an express stipulation contrary thereto. A raiyat could, therefore, under the former law contract himself out of his status. Under the former law, it was held that a raiyat holding land under a *bhagdari* or *bhaoli* tenure (*i. e.*, upon a rent consisting of a portion of the produce) could acquire a right of occupancy (*Harihar Mukhurji v. Biressar Banurji*, 6 W. R., Act

X, 17; *Jatto Moar v. Basmati Koer*, 15 W. R., 479). So also, could a raiyat holding a **nuksan utbandi jote**, (see sec. 180) and who by the custom of the locality paid rent when the land could be cultivated, and no rent, when he could not cultivate it (*Premananda Ghosh v. Sure ra Nath Rai*, 20 W. R., 329). A right of occupancy could be acquired by a cultivator in that portion of the land used for his **habitation** as well as in that which was cultivated (*Mohes Chandra Gangapadhaya v. Bishonath Das*, 24 W. R., 402), even if instead of cultivating the land he set up **shops** on it and received profits from the shop-keepers (*Khajurunnisa v. Ahmed Reza*, 11 W. R., 88), in **bastu** land, if the tenure of the **bastu** land was **raiyyatwari** (*Pogose v. Raju Dhopi*, 22 W. R., 511), in a **tank** appurtenant to land let for cultivation (*Nidhi Krishna Basu v. Ram Das Sen*, 20 W. R., 341; *Uma Charan Baruah v. Mani Ram Baruah* 8 C. W. N. 192), and in land let for **grazing** horses (*Fitzpatrick v. Wallace*, 2 B. L. R., A. C., 317 : 11 W. R., 231). A firm owning an indigo concern and taking a cultivating lease of land could acquire a right of occupancy in it, provided the lease was granted to the original members of the firm, and by the custom of the locality the rights of occupancy in the lands could be transmitted to persons subsequently admitted as members of the firm (*Laidley v. Gaur Gobinda Sarkar*, 11 Calc., 501). A raiyat could acquire a right of occupancy, even though he let out his land to others to cultivate (*Brindaban Chandra Chaudhri v. Issar Chandra Biswas*, W. R., Sp. No., 1864, Act X, 1; *Ram Mangal Ghosh v. Lakhi Narain Shaha*, 1 W. R., 71); provided he was a **bona fide cultivator** in the sense of deriving the profits from the produce directly (*Kali Charan Singh v. Amirudin*, 9 W. R., 579). A raiyat who had held or cultivated a piece of land continuously for more than 12 years, but under several written leases or pattahs, each for a specific term of years, was entitled to a right of occupancy, and neither the mere fact of his taking a lease for a term of years, nor the existence of a right of re-entry on the part of the landlord amounted to an express stipulation under sec. 7, so as to prevent the right of occupancy being acquired under sec. 6 of Act X of 1859 (*Sheo Prakash Misra v. Ram Sahai Singh*, 17 W. R., 62 : 8 B. L. R., 165; *Mukhtar v. Brajraj Singh*, 9 C. L. R., 144; *Chandrabati Koer v. Harrington*, 18 Calc., 349 : L. R., 18 I. A., 27). Similarly, a raiyat allowed to continue in occupation of the land on the expiry of a lease, which gave the landlord a right of re-entry at the end of its term, but which the landlord did not choose to avail himself of, and whose total period of occupation amounted to twenty years, was held to have acquired a right of occupancy (*Ibatullah v. Mahomed Ali*, 25 W. R., 114). Raiyats were entitled to add the time during which their fathers or other persons from whom they had inherited had been in possession, to the time of

their own possession in computing the period of twelve years required for the acquisition of a right of occupancy (*Watson v. Sarat Sundari Debi*, 7 W. R., 395 ; *Nim Chand Baruah v. Murari, Mandal*, 8 W. R., 127 ; *Lal Bahadur Singh v. Solano*, 10 Calc., 45 : 12 C. L. R., 559). They could count both the time when they had been in sole possession of the land and the time they had been in possession of it jointly with others (*Forbes v. Ram Lal Biswas*, 22 W. R., 51 ; but see *contra*, *Mahomed Chaman v. Ram Prasad Bhakul*, 8 B. L. R., 388 : 22 W. R., 52 note). They could acquire rights of occupancy, even although the persons under whom they held the land had no title to it (*Amir Hussain v. Sheo Sahai*, 19 W. R., 338 ; *Zulfan v. Rudhika Prasonno Chandra*, 3 Calc., 560 : 1 C. L. R., 388), and the expiration of the lease of an *ijaradar* under whom a raiyat's possession under a *jotedari* right had commenced, could not affect the application of section 6 of Act X (*Ghulam Panja v. Harish Chandra Ghosh*, 17 W. R., 552). Wrongful eviction is not such an interruption of possession as would prevent a raiyat acquiring a right of occupancy (*Mahomed Ghazi Chaudhuri v. Nur Mahomed*, 24 W. R., 324 ; *Lutifunnissa v. Pulin Bihari Sen*, W. R., Sp. No., F. B., 91 ; *Radha Govinda Koer v. Rakhaldas Mukhurji*, 12 Calc., 82). A right of occupancy might be acquired in respect of an undivided share of an estate (*Muktakeshi Dasi v. Kailas Chandra Mitra*, 7 W. R., 493 ; *Jardine Skinner & Co., v. Sarat Sundari Debi*, 3 C. L. R., 140 : L. R., 5 I. A., 164 ; *Baidya Nath Mandal v. Shudharam Misri*, 8 C. W. N., 751 ; *Uma Charan Baruah v. Mani Ram Baruah*, 8 C. W. N., 192). Rights of occupancy could be acquired in *khamar*, *nij-jote* or *sir* land, if let otherwise than for a term, or year by year (*Gour Hari Singh v. Bihari Raut*, 12 W. R., 278 : 3 B. L. R., App., 138 ; *Bhagwan Bhagat v. Jug Mohan Rai*, 20 W. R., 308 ; *Ashraf v. Ram Kishor Ghosh*, 23 W. R., 288). Compare sec. 116 of this Act.

Non-acquisition of occupancy-rights under the former law.—Rights of occupancy could not be acquired by trespassers (*Pir Baksh v. Miajan*, W. R., Sp. No., F. B., 164 ; *Gulam Haidur v. Purno Chandra Rai*, 3 W. R., Act X, 147 ; *Ishan Chandra Ghosh v. Harish Chandra Banurji*, 18 W. R., 19 : 10 B. L. R., App., 5). A raiyat who secretly possesses himself of land and pays no rent for it has no right of occupancy in that land (*Gharib Mandal v. Bhuban Mohan Sen*, 2 W. R., Act X, 85). Possession obtained and continued by fraud can give no right of occupancy (*Bhubanjai Acharji v. Ram Narain Chaudhri*, 9 W. R., 449). Mere possession of a permissive character without any right cannot confer a right of occupancy (*Mohar Ali Khan v. Ram Rattan Sen*, 21 W. R., 400 ; *Adaito Charan De v. Peter Das*, 17 W. R., 383). Mere possession as a servant for 12 years does not give rise to right of

occupancy (*Umamayi Barmanya v. Boko Behra*, 13 W. R., 333). A person occupying land as an assignee of the *zamindar* and cultivating because of the opportunity thus afforded cannot claim the benefit of sec. 6 of Act X of 1859 (*Uma Nath Tewari v. Kundan Tewari*, 19 W. R., 177). Rights of occupancy could not be acquired by a middleman (*Gopi Mohan Rai v. Sib Chandra Sen*, 1 W. R., 68); or by a *tikhdar*, (*Ram Saran Sahu v. Veryag Mahton*, 25 W. R., 554); or by a tenant holding under a *zar-i-peshgi* constituting a security for money advanced (*Bengal Indigo Co. v. Raghubar Das*, 24 Calc., 272 : L. R., 23 I. A., 158 : 1 C. W. N., 83). Rights of occupancy could not be acquired in land occupied exclusively by buildings (*Sarnomayi v. Blumhardt*, 9 W. R., 552; *Mohar Ali Khan v. Ram Ratan Sen*, 21 W. R., 400), or in land the main object of the occupation of which was the dwelling-house, and when the cultivation of the soil, if any, was entirely subordinate thereto (*Kali Krishna Biswas v. Janki*, 8 W. R., 250; *Ram Dhan Khan v. Hara Dhan Paramanik*, 12 W. R., 404 : 9 B. L. R., 107 note). No right of occupancy could be acquired in a tank used only for the preservation and rearing of fish and not forming a part of any grant of land or an appurtenance to any land (*Shibu Jelya v. Gopal Chandra Chaudhri*, 19 W. R., 200); and a grant of a right of fishery in such a tank gives no interest in the sub-soil (*Mahanand Chakravartti v. Mangala Kcotuni*, 31 Calc., 937 : 8 C. W. N., 804); or in a tank with only so much land as is necessary for its banks (*Nidhi Krishna Basu v. Ram Das Sen*, 20 W. R., 341; or in a *jalkar* (*Uma Kanth Sarkar v. Gopal Singh*, 2 W. R., Act X, 19; *Sham Narain Chaudhri v. Court of Wards*, 23 W. R., 432; *Jagubandhu Saha v. Promotho Nath Rai*, 4 Calc., 767; *Bollai Sati v. Akram Ali*, 4 Calc., 961); or by an indigo concern or firm, having no corporate existence (*Cannan v. Kailash Chandra Rai*, 25 W. R., 117); or by a firm of capitalists (*Rai Kamal Dasi v. Laidley*, 4 Calc., 957). In computing the period of twelve years necessary for the acquisition of occupancy rights, raiyats are not entitled to add the period of their predecessors' possession to their own, except when they have inherited the lands from their predecessors or the *jote's* are transferable (*Watson v. Sarat Sundari Debi*, 7 W. R., 395; *Dinobandhu De v. Ram Dhan Rai*, 9 W. R., 522; *Durga Sundari v. Brindabun Chandra Sarkar*, 11 W. R., 162; *Narendra Narain Rai v. Ishan Chandra Sen*, 22 W. R., 22 : 13 B. L. R., 274; *Khirod Chandra Rai v. Gordon*, 23 W. R., 237; *Lal Bahadur Singh v. Solano*, 10 Calc., 45 : 12 C. L. R. 559); not even with the consent of the *zamindar* (*Tura Prasad Rai v. Surjo Kanth Acharji*, 15 W. R., 152; *Haidar Baksh v. Bhubendra Deb Kunwar*, 17 W. R., 179; but see *contra* on this point, *Haro Chandra Guha v. Dunne*, 5 W. R., Act X, 55). Rights of occupancy could not be acquired in

lands sub-let for a term, or year by year by raiyats having occupancy rights (*Gilmore v. Sarbessari Dasi*, W. R., Sp. No., 1864, Act X, 72; *Jamaitunnissa Bibi v. Nur Mahomed*, *ibid*, 77; *Ketal Gain v. Nadir Mistri*, 6 W. R., 168; *Abdul Jubar v. Kali Churan Datta*, 7 W. R., 81; *Kuli Kishor Chaturji v. Ram Chandra Shah*, 9 W. R., 344; *Haran Chandra Pal v. Mukta Sundari*, 10 W. R., 113; 1 B. L. R., A. C., 81; *Ram Dhan Khan v. Haradhan Parumanik*, 12 W. R., 404; 9 B. L. R., 107 note; *Nil Kamal Sen v. Danesh*, 15 W. R., 469; *Ishan Chandra Ghosh v. Harish Chandra Banurji*, 18 W. R., 19; *Annappurna Dasi v. Radha Mohan Putro*, 19 W. R., 95). Rights of occupancy could not be gained in *khamar*, *nij-jote* or *sir* land, if let on a lease for a term or year by year (*Gaur Hari Singh v. Bihari Raut*, 12 W. R., 278; 3 B. L. R., App., 138; *Bhagwan Bhagat v. Jogmohan Rai*, 20 W. R., 308; *Ashraf v. Ram Kiskor Ghosh*, 23 W. R., 288). See sec. 116. In *Haro Govindo Raha v. Ram Ratno De*, (4 Calc., 67), it was doubted whether rights of occupancy could accrue in land held under a service tenure, but in *Ram Kumar Bhurtacharji v. Ram Niwaz Rajguru*, (31 Calc., 1021), it has been decided that such rights can be acquired in *chaukidari chakran* lands. But not by the under-tenants of such lands (*Mritanjai v. Kenatullah*, 11 C. W. N., 46).

Acquisition of occupancy-rights by custom.—According to Peacock, C. J., in *Thakurani Dasi v. Bisheswar Mukhurji*, (B. L. R., F. B., 326; 3 W. R., Act X, 29), Act X “did not take away the right of any raiyat, who had a right by grant, contract, prescription or other valid title to hold at a fixed rate of rent.” In *Hills v. Ishwar Ghosh* (W. R., Sp. No. F. B., 148), it was also said by the same learned Judge that “if there are any ancient or hereditary rights to which a raiyat is entitled, he is not precluded by Act X of 1859 from claiming and proving such rights in due course of law.” See also *Lilunund Singh v. Nirpat Muthun* (17 W. R., 306.) All customs, usages and customary rights are now saved by the provisions of sec. 183, from illustration 2 to which section it is evident that there may be a valid custom or usage of the acquisition of rights of occupancy by under-raiyats. This is further apparent from sec. 113, as amended by the Bengal Tenancy (Amendment) Act, III, B. C., of 1898, in which reference is made to the holding of an under-raiyat having occupancy rights.

An occupancy-right acquired under former law continues under present law.—In a case under the present Act, in which certain land had been used as an orchard, and had been held by the plaintiff for about fifty years, it was argued that the land, being horticultural land, a right of occupancy could not be acquired in it under the present Act. But it was held that a right of occupancy had been

acquired in the land under the former law, and that, whether or not the present Act applies to horticultural land, when a right of occupancy had been acquired under the old law, it was not forfeited by the repeal of that Act, there being nothing in the new enactment to deprive any person of a statutory right which had been acquired (*Hari Ram v. Narsingh Lal*, 21 Calc., 129). See also *Hassan Ali v. Govind Lal Basak*, (9 C. W. N., 141). There is nothing in the Bengal Tenancy Act to take away a right of occupancy acquired under leases granted at a time when Act VIII, B. C., of 1869 was in force, (*Baidya Nuth Mandol v. Sudhuram Misri*, 8 C. W. N., 751.)

Under sec. 178 (1) (b) nothing in any contract between a landlord and a tenant made before or after the passing of this Act shall take away an occupancy right in existence at the date of the contract.

20. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat."

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Extended to Orissa (Not., September 10th, 1891).

Sub-sections (1) and (2). Settled raiyats.—These sub-sections, which are the result of an attempt to rehabilitate the “*khudkash*” or “resident raiyat” of the old regulations, made a great change in the rent law. Under Act X of 1859 and Act VIII, B. C., of 1869, it was necessary for the acquisition of a right of occupancy in land that a raiyat should have held the same land for twelve years, and if he took up fresh land in the village, he had no right of occupancy in it until the lapse of a period of twelve years (*Amar Chand Lahatta v. Bakshi Paikar*, 22 W. R., 228). Now, a raiyat is a settled raiyat of the village and has (sec. 21) an occupancy-right in all land in the village in which he, or the person whose heir he is, has held any land for twelve years. When the holdings of the defendants consisted of land held by them partly for more than twelve years, and partly for less than twelve years, and the two classes of land were undistinguishable; *held*, that the defendants were settled raiyats, and had under s. 21 occupancy rights in all the lands held by them (*Sarat Chandra Rui v. Asiman*, 31 Cal., 725 : 8 C. W. N., 601). But this rule does not apply to *chur* or *dearah* land or to land held under the custom of *utbandi*, which must still be held for twelve years before a right of occupancy accrues (sec. 180.)

The provisions of sub-section (1) were introduced to prevent landlords barring the acquisition by their raiyats of rights of occupancy by shifting them, or changing the lands of their holdings before the expiry of twelve years. It was at one time proposed to insert the word “estate” in this section in place of the word “village”; but it was ultimately determined not to do so. Landlords can, therefore, still prevent their raiyats acquiring occupancy rights by shifting them from one village to another within their estates before the completion of the statutory period.

There is one point which the provisions of sub-section (2) leave somewhat uncertain, *viz.*, whether a raiyat can become a "settled raiyat" by holding during twelve years different plots of land in the same village under different landlords, or whether he must hold his land under one and the same landlord. See *Kuldip Singh v. Chatur Singh Rai*, (3 C. L. J., 285 : 2 C. W. N., cccii).

Distinction between occupancy raiyats and settled raiyats. - The term "occupancy-raiyats" used in the Act does not cover, "settled raiyats." "An occupancy right may be acquired by a new-comer by purchase," (*i. e.*, provided it be transferable by custom), "while the status of settled raiyat, is acquired by cultivating any land in the village as a raiyat for twelve years, or by inheritance from a raiyat who has done so." (Statement of Objects and Reasons of Bill, No. III of 1897, to amend the Bengal Tenancy Act, para 24 and *Kuldip Singh v. Chatur Singh Rai*, 2 C. W. N., cccii : 3 C. L. J., 285). The status of a settled raiyat as defined in sec. 20 cannot be transferred and consequently though every settled raiyat has a right of occupancy, every occupancy-raiyat is not necessarily a settled raiyat (*Kuldip Singh v. Chatur Singh Rai*, 2 C. W. N., cccii : 3 C. L. J. 285).

The Board of Revenue have issued the following instructions to settlement officers on this point.

"A raiyat who has held any land in a village for 12 years by himself or partly through the person from whom he has inherited, is a settled raiyat of that village. He has the occupancy-right not only in that land but also in all other land in that village forming part of his holding or which he may at any time add to his holding. His status as a settled-raiyat passes to his heir, but it cannot be sold. Thus, all occupancy-raiyats who have acquired the occupancy-right through the occupation of land for 12 years, or by inheritance from one who held for that period, should be recorded as settled raiyats. The only remaining class of occupancy-raiyats are those who have purchased the occupancy-right, but have not held the land to which it is attached for 12 years, or who have inherited from such purchasers, the term of 12 years from the purchase*being still unexpired. These alone should be recorded as occupancy-raiyats" (Board's Settlement Manual Part II, Chap. III, p. 346 p. 98).

Sub-section (3).—The provisions of this sub-section are similar to those of sec. 6 of Act X of 1859 and of Act VIII, B. C., of 1869, according to which "the holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section." Under the former law, a raiyat was always entitled to add the occupation of his father or other person from whom he had inherited his land to his own in computing the period necessary for his acquisition of an occupancy-right, but not that of a person

from whom he might have purchased the land, unless the holding was of a transferable nature. See notes to sec. 19 *ante*, pp. 92-94. Occupancy-rights are now expressly made heritable by sec. 26. As to the liability of occupancy raiyats for rent which accrued in the lifetime of their predecessors, see the notes to that section. An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant (*Ananda Kumar Naskar v. Hari Das Haldar*, 27 Calc., 545 ; 4 C. W. N., 608).

Sub-section (4).—The sub-section follows the rule laid down by the High Court in *Forbes v. Ram Lal Biswas* (22 W. R., 51), setting aside *Mahomed Chaman v. Ram Prasad Bhugat* (8 B. L. R., 338 ; 22 W. R., 52 note).

When some lands were held by several occupancy raiyats jointly and some of them relinquished in favour of the landlord ; *held*, that the relinquishment did not operate by way of enlarging the rights of the raiyats who remained on the land by giving them an interest over the whole holding (*Piari Mohan Mandal v. Rudhika Mohan Hazra*, 5 C. L. J., 9).

Sub-section (5).—Under this sub-section a raiyat may apparently abandon his holding and leave the village and may still retain his rights as a settled raiyat, provided he returns within one year's time and takes another holding in the same village, it may be under a different landlord.

Sub-section (6).—The sub-section follows the rule laid down by the High Court in *Mahomed Ghazi Chaudhri v. Nur Mahomed* (24 W. R., 324), in which a *zamindar* sued a raiyat for ejectment and the raiyat pleaded continuous occupancy for twelve years, and it was found he had been ejected during that period, but had got back into possession. It was held that if the eviction were wrongful, it would not be such an interruption as would prevent the raiyat from acquiring a right of occupancy, but it was for the raiyat to show that the eviction was wrongful. See also *Lutfunnessa v. Pulin Bihari Sen*, (W. R., Sp. No., F. B. 91) and *Radha Govind Koer v. Rakhal Das Mukhurji*, (12 Calc., 82).

Sub-section (7). Onus of proof.—This sub-section made a great change as to the onus of proof in rent cases. It was introduced in the interests of the raiyats, who had always experienced difficulty in producing legal proof of their acquisition of occupancy rights. Now, the onus is on the landlord to disprove the assertion on the part of their raiyats of their having held land continuously for twelve years. This presumption can only arise in the case of a raiyat who has other occupancy holdings in the same village when those other occupancy holdings are held under the same landlord (*Kuldip Singh v. Chatur Singh Rai*, 3 C. L. J., 285 ; 2 C. W. N., cccii). And this presumption does not apply to the occupants

of *chur* or *dearah* land, who, if they allege that they have been for twelve continuous years in possession, must prove that allegation (*Beni Prasad Koeri v. Chaturi Tewari*, 33 Calc., 444 ; 4 C. L. J., 63).

In a suit brought by a purchaser of an estate at a sale for arrears of Government revenue, it is for the defendant who claims to be a raiyat with a right of occupancy to start a *prima facie* case by showing that he held the lands as a raiyat within the meaning of the proviso to sec. 37, Act XI of 1859 (*Ambica Charan Chakravartti v. Daya Gazi*, 3 C. L. J., 511 : 10 C. W. N., 497).

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

Settled raiyats
to have occu-
pancy-rights.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force ; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Extended to Orissa (Not., Sept. 10th, 1891).

Restrictions on the acquisition of occupancy-rights.—Notwithstanding the provisions of this section, occupancy-rights cannot be acquired in proprietors' private lands, known in Bengal as *khamur*, *nij* or *nij-jote* and in Behar as *zirat*, *sir* or *kumat*, if let under a lease for a term of years or under a lease from year to year (sec. 116). As already pointed out settled raiyats do not acquire occupancy-rights in *chur*, *dearah* or *utbandi* lands, until they have held the same land for twelve continuous years (sec. 180). Occupancy-rights cannot be acquired in *ghatwali* lands (*Upendra Nath Hazra v. Ram Nath Chaudhri*, 33 Calc., 630 : *Mohesh Manjhi v. Pran Krishna Mandal*, 1 C. L. J., 138).

When a lessee of lands in the occupation of raiyats who had jote rights obtained *khas* possession with the consent of the raiyats for the purpose of indigo cultivation ; held, that the lessee being merely a land-

lord in occupation did not acquire occupancy-rights in the land, and the lessor became entitled to *khas* possession on the expiry of the lease (*Ram Lochan Koeri v. Collingridge*, 11 C. W. N., 397).

If a tenant is an occupancy or settled raiyat of some lands in a village he is entitled to right of occupancy in respect of other lands held by him in the same village if he holds them as a raiyat and not in any other capacity. (*Bujrangi Raut v. M. H. Mackenzie*, 7 C. L. J., 475).

Accreted lands.—A raiyat who has a right of occupancy has the same right in land accreted to his *jote* as he has in his *jote* (*Gaur Hari Kaibartto v. Bhola Kaibartto*, 21 Calc., 233) ; but not if he is a yearly raiyat of *chur* or *dearah* land (*Beni Prasad Koeri v. Chaturi Tewari*, 33 Calc., 444).

Urban and suburban lands.—The use of the word "village" in this section shows that no right of occupancy can be acquired under the Act in towns and suburban lands, and it has been held that "there is no authority for the proposition that there may be rights of occupancy in suburban lands let for purposes of building, though these rights may not be cognizable under a law intended only for agricultural landlords and tenants" (*Rakhaldas Addi v. Dinomayi Debi*, 16 Calc., 652.) The original Act did not expressly exclude from its operation urban areas except the town of Calcutta (*Hussan Ali v. Govinda Lal Basak*, 9 C. W. N., 141.) But see the addition to s. 1 (3), made by s. 3, Act I, B. C., of 1907, p. 2. and Act I, E. B. C., of 1908.

Sub-section (2).—The 2nd March, 1883, is the date on which leave was obtained to introduce into the Council the Bill to amend the Tenancy Act. The object of this sub-section was to prevent raiyats being induced to contract themselves out of their rights during the passing of the Bill through the Council. This object is given further effect to in sec. 178. The provisions of sub-section (2) of section 21 are expressly retrospective and apply to suits pending at the commencement of the Act (*Jogeshar Das v. Aisani Koibartto*, 14 Calc., 553 ; *Tupsi Singh v. Ram Saran Koeri* 15 Calc., 376).

Veto on contracts barring acquisition of occupancy-rights.—Under sec. 178 (1) (a) nothing in any contract between a landlord and tenant made before or after the passing of this Act shall bar in perpetuity the acquisition of an occupancy-right in land. Under sub-sec. (2) nothing in any contract made between a landlord and a tenant since the 15th July, 1880, (the date of the publication of the Rent Commission's Report) and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act, an occupancy-right in land ; and under sub-sec. (3) (a) nothing in any contract between a landlord and a tenant after

the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy right in land.

22. (1) When the immediate land-lord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be ;) but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, he shall be entitled to hold the land subject to the payment to his co-proprietors or joint permanent tenure-holders of the

EASTERN BENGAL & ASSAM.

“**22.** (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder (as the case may be ;) but nothing in this sub-section shall prejudicially affect the rights of any third person.”

“(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenure-holder as the case may be, and shall pay to his co-

shares of the rent which may be from time to time payable to them ; and if such transferee sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of the land.

Illustration.—*A*, a co-sharer landlord, purchases the occupancy holding of a raiyat *X*. *A* is entitled himself to hold the land on payment to his co-sharers of the shares of the rent payable to them in respect of the holding. *A* sub-lets the land to *Y*, who takes it for the purpose of establishing tenants on it ; *Y* becomes a tenure-holder in respect of the land. Or *A* sub-lets it to *Z*, who takes it for the purpose of cultivating it himself ; *Z* becomes a raiyat in respect of the land.

(3) A person holding land as an ijaradar or farmer of rents shall not, while so holding, acquire [by purchase, or otherwise,] a right of occupancy in any land comprised in his ijara or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interest-

sharers a fair and equitable sum for the use and occupation of the same."

"(3) In determining from time to time what is a fair and equitable sum under sub-section (2) regard shall be had to the rent payable by the occupancy raiyat at the time of the transfer and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy raiyats."

"(4) A person holding land as an ijaradar or farmer of rents shall not, while so holding, acquire by purchase or otherwise, a right of occupancy in any land comprised in his ijara or farm."

The intention of this section is to carry out the policy of the framers of Act VIII of 1885 and to prevent or discourage the acquisition of occupancy rights by landlords.

Sub-section 2) in the Bengal Act does not clearly extinguish the tenancy or holding and leaves the status and position of the purchasing co-sharer landlord uncertain. The amendment while providing that in respect of his exclusive possession,

ed in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijara or farm.

the purchasing landlord shall pay to his co-sharers, the sum which would have been payable from time to time by the occupancy raiyat, is intended to make it clear, that his possession shall be the exclusive possession of a co-sharer proprietor or tenure-holder as the case may be.

As a tenure-holder is a tenant the word raiyat has been substituted for the word tenant in both the subsections (1) and (2).

In the Bengal Act the word rent is used for the sum payable by the purchasing co-sharer to the other co-sharers and might lead to an ambiguity as to the status of the former: the present section is so framed as to obviate that difficulty.

Extended to Orissa, (Not., Sep. 10th, 1891].

The words in heavy brackets in this section were added by s. 10, Act I, B. C., 1907. The section as altered for Eastern Bengal will be found in the opposite column.

Sub-section (1).—The rule laid down in this section is analogous to the provisions of section III, cl. (d), of Act IV of 1882, under which a lease of immoveable property determines in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right. It is in accordance with the rulings of the High Court in the cases of *Mitrajit Singh v. Fitzpatrick*, 11 W. R., 206; *Reed v. Srikrishna Singh*, 15 W. R., 430; *Bul Chand Jha v. Lathu Mudi*, 23 W. R., 387; *Lal Bahadur Singh v. Solano*, 10 Calc., 45; 12 C. L. R., 559; and *Rattha Govind Koer v. Rakhal Das Mukhurji*, 12 Calc., 82. But see *contra*, *Umesh Chandra v. Raj Narain*, 10 W. R., 15; *Rushton v. Atkinson*, 11 W. R., 485 and *Savi v. Panchanan*, 25 W. R., 503. In *Lal Bahadur Singh v. Solano*, it was said that a right of occupancy must be acquired against somebody, and if a raiyat is in possession of the land in a double capacity, both as a raiyat and as a *malik*, it is almost impossible to conceive how he can under these circumstances acquire a right of occupancy against himself. In *Radha Govind Koer v. Rakhal Das Mukhurji*, (12 Calc., 82), it was decided that even if the proprietor purchased an occupancy raiyat's land *benami* in the name of a third person, the right was gone; and in *Piari*

Mohan Mukhurji v. Badal Chandra Bagdi, (28 Calc., 205 : 5 C. W. N., 310), it was held that an under-raiyat's lease which was without the landlord's consent and unregistered was invalid, and a landlord purchasing the holding of the raiyat in execution of a decree for arrears of rent was entitled to eject the under-raiyat, who was not protected by this clause. But the contrary was laid down in *Amirulla v. Nazir Mahomed*, (31 Calc., 932). This judgment was subsequently withdrawn, as it was discovered that no notice had been served on the heirs of the deceased respondent. But the principles of the judgment were affirmed in *Amirulla v. Nazir Mahomed*, (3 C. L. J., 155 : 34 Calc., 104). It was, however, distinguished from in *Badan Chandra Das v. Rajeswari Debya*, (2 C. L. J., 570); in which case the plaintiff, a *jotedar* under Government, let out a portion of his jote to a raiyat as *chukanidar*, who again sublet a portion of his holding to the defendant, without the consent of the plaintiff, and otherwise than by a registered instrument. Subsequently, the raiyat having surrendered a portion of his holding, which, he had sublet to the defendant, plaintiff brought this suit for recovery of possession; *held*, sec., 22 did not apply, and the landlord was entitled to *khas* possession and no notice to quit was necessary.

There is no merger in the case of a *patni* interest coming into the same hands as the *samindari* interest (*Jibunti Nath Khan v. Gokul Chandra Chaudhuri*, 19 Calc., 760). The contrary was held in the case of a *patni* interest created after the passing of the Transfer of Property Act (*Promotho Nath Mitra v. Kuli Chaudhuri*, 28 Calc., 744; see, too, *Prasanna Nath Rai v. Jagat Chandra*, 3 C. L. R., 159). When *shikmi* and *mukarari* interests become vested at one time in the same persons, then, whether the *mukarari* lease was a lease for agricultural purposes or not, the *mukarari* interest merges in the superior tenure (*Surju Narain Mandul v. Nanda Lal Sinha*, 33 Calc., 1212).

The rights of third persons referred to in this sub-section and in sub-section (2) must be valid rights (*Piari mohan Mukhurji v. Badal Chandra Bagdi*, 28 Calc., 205 : 5 C. W. N., 312), and cannot therefore save the rights of a mortgagee from the raiyat who has died without heirs; "otherwise" means, in a similar way (*Mukta Keshi Dasi v. Pulin Behari Singh* 13 C. W. N., 12).

Sub-section (2).—In *Gur Baksh Rai v. Jeolal Rai*, (16 Calc., 127), in which a tenant had commenced to occupy his holding in 1871 and had purchased a fractional share of the proprietary interest in 1878, it was held on his suing for possession after being dispossessed in May, 1886, that there was nothing in Act VIII, B. C., of 1869 to prevent his acquiring such right, if after his purchase he continued to hold the land as a raiyat, and the relation of landlord and tenant existed between himself and

his co-sharer proprietor, and if the period for which he so held extended for twelve years from the commencement of his holding. In *Sitanath Panda v. Pularam Tripathi*, (21 Calc, 869), the plaintiff sued for a share of the rent of a *jote*, alleging that it had been purchased by the defendants, who were his co-sharers in the landlord's interest. It was held that the plaintiff was entitled to a decree and it was said that, though the section provides that on the transfer of an occupancy right in land to a person jointly interested in the land as proprietor or permanent tenure-holder, the occupancy right shall cease to exist, "it does not follow that the tenancy will be altogether extinguished. The third person mentioned in the clause must be held to include every person interested other than the transferor and transferee. So that the acquisition of an occupancy right by a proprietor would not affect the right of a co-sharer landlord to receive his share of the rent of the tenancy." In another case, *Jawadul Hak v. Ram Das Saha*, (24 Calc., 143 : 1 C. W. N., 166), the plaintiff, who was a co-sharer in a *taluk*, sued for *khas* possession to the extent of his share in a *jote*, in which the defendant had put up to sale and purchased the occupancy right of a tenant, the defendant being the plaintiff's co-sharer in the *taluk* in which the *jote* was situated. The Munshiff before whom the suit first came dismissed the suit, holding that the defendant who had purchased the *jote*, was entitled to hold it as a tenant, and that the plaintiff was accordingly not entitled to *khas* possession of his share. His decision was reversed by the Subordinate Judge, who held that the principal defendant had purchased nothing, the effect of his purchase being to extinguish the entire tenancy. On appeal to the High Court the Subordinate Judge's decision was reversed by Beverly, J., and on appeal under the Letters Patent to a Bench of five Judges the decision of Beverly J., was affirmed. In the judgment of the Bench it was said:—"Sub-section (2) of section 22 of the Tenancy Act provides that if an occupancy-right is transferred to a person jointly interested in the land as a proprietor, the occupancy-right shall cease to exist. It is not said, and the sub-section cannot be understood to mean, that the holding shall cease to exist, but that the occupancy-right which is an incident to the holding shall cease to exist, and there is nothing in the sub-section inconsistent with the continuance of the holding, divested of this right of occupancy which attached to it. The saving clause in the sub-section 'that nothing in it shall prejudicially affect the rights of any third person,' indicates also that the holding would for some purposes at all events, continue to exist."

The ruling in the case of *Jawadul Hak v. Ram das Saha*, (24 Calc., 143) was followed in *Miajan v. Minnat Ali*, (24 Calc., 521). But in *Ram Saran Poddar v. Mahomed Latif*, (3 C. W. N., 62) it was held that,

when a landlord had brought an occupancy holding to sale, had purchased it himself, and settled it with a new raiyat, he could not sell the same occupancy holding again in execution of a decree for arrears of rent of past years. It was said that there was no subsisting right in the old raiyat, which could be sold, and the plaintiff, who purchased at the second sale, had acquired nothing.

In *Girish Chandra Chaudhri v. Kedar Chandra Rai*, (27 Calc., 473 ; 4 C. W. N., 569), the case of *Jawadul Hak v. Ram Das Saha* was again distinguished from. In this case the plaintiffs and the defendants were the joint owners of a *taluk*, appertaining to which there was a non-transferable occupancy holding. The defendants brought to sale and purchased that holding in execution of a money decree and took possession of the land. The plaintiffs sued to obtain joint possession with the defendants of the land. They were successful in the lower Courts. In second appeal it was argued on the authority *Jawadul Hak v. Ram Das Saha* that the occupancy-right was severable from the tenancy right, and that although the occupancy-right could not be sold, the sale and purchase of the tenancy right were good, and that the plaintiff had consequently no right to interfere with the possession of the purchasing defendants. But the appeal was disallowed. "Section 27," it was said, "does not make a non-transferable occupancy holding transferable, when the purchaser happens to be one of the proprietors. That section, read in connection with the other sections of the Act, must be taken to refer to occupancy holdings which are of a transferable character, and the section enacts that when such a holding is transferred to one of the co-proprietors the occupancy-right in the land so transferred shall cease to exist. The decision to which we have been referred merely held that although by the operation of that section the occupancy-right ceased to exist, there might be a good transfer of the holding. Although under the provisions of sec. 22, an occupancy-right may be severable, it is only severable in cases to which that section applies, and cannot be made severable in all cases. Apart from any special provision of law such as is contained in section 22, and is applicable only to the cases referred to in that section, it does not seem possible on any principle to hold that in the case of a non-transferable occupancy holding, the holding can be sold without the right of occupancy, so as to give the transferee a right to retain possession of it." See also *Dilbar Sardar v. Husain Ali*, (26 Calc., 553), and *Ramrup Mahto v. Manners*, (4 C. L. J., 209). The correctness of the decision in *Jawadul Hak's* case was subsequently affirmed by a Full Bench in *Ram Mohan Pal v. Kachu*, (32 Calc., 386 ; 1 C. L. J., 1 ; 9 C. W. N., 249).

Sub-section (3).—Sub-section (3) and the explanation to the section follow the rulings of the High Court in the following cases : (*Gilmore*

v. *Srimant Bhumi*, W. R., Sp. No., 1864, Act X, 77; *Watson & Co. v. Jogendra Narain Rai*, 1 W. R., 76; *Mokundo Lal Dhobi v. Crowdy*, 17 W. R., 274; 8 B. L. R., App., 95; *Umanath Tewari v. Kundan Tewari*, 19 W. R., 177; *Savi v. Panchanan Rai*, 25 W. R., 503; *Ram Saran Suhu v. Veryag Mahton*, 25 W. R., 554; *Jardine Skinner & Co. v. Sarat Sundari Debi*, 3 C. L. R., 140; L. R., 5 I. A., 164; *Rai Kamal Dasi v. Laidley*, 4 Calc., 957).

In a case decided under the Tenancy Act, (*Maseyk v. Bhagabati Burmania*, 18 Calc., 121), the question was whether certain persons who had occupied land as raiyats were debarred from acquiring occupancy-rights in it owing to their being *jointly* interested in the land as *ijaradars* or farmers. It was held that they were not.

Alterations made in this section by Act I, B. C., of 1907.—

In the Notes on Clauses of the Bengal Tenancy (Amendment) Bill 1906, it was explained that the object of the amendment of section 22 was to counteract the ruling of the High Court in *Jawadul Hak's* case and the Full Bench ruling in *Ram Mohan Pal v. Kachu*. "These decisions" it was said, "lay down a rule opposed to the policy of the authors of Act VIII of 1885, which was to discourage the acquisition of occupancy holdings by landlords."

The provisions of sub-section (2) were greatly modified by the Select Committee on the Bill who in their report observe that "the amendments made by them in the section will give effect to the intention of the framers of the Act, by providing that, where a sole landlord acquires an occupancy holding of his raiyat, the interests of such landlord and tenant merge into a landlord's interest; and that where one of several co-sharer landlords or joint tenure-holders acquires an occupancy-right of a tenant of all the co-sharers or joint-tenure holders, such landlord cannot thereby acquire an occupancy-right, or by sub-letting, bar the acquisition of raiyati rights by the sub-lessees. At the same time, under the section as modified by us, the landlord will not be prevented from cultivating the land himself, though the holding will not become proprietor's private land. We have inserted an illustration to make the meaning of the section quite clear. Our attention has been called to a ruling of the High Court (*Ramrup Mahto v. Manners*, 4 C. L. J., 209) to the effect that the word 'acquire,' in sub-section (3) of section 22, does not include 'purchase.' In order to prevent the acquisition of a right of occupancy by an *ijaradar* during the period of his lease through a purchase behind the back of the landlord, we have inserted the words 'by purchase or otherwise' after the word 'acquire.'"

Incidents of occupancy-right.

*Incidents of
occupancy-right.
Rights of
raiyyat in respect
of use of land.*

23. When a raiyyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Extended to Orissa, (Not., Sept. 10th, 1891).

Nothing in a contract made after the passing of this Act shall take away or limit the right of an occupancy raiyyat to use land as provided by this section [sec. 178 (3) (b)].

Use of land by occupancy raiyyats.—In an early case under Act X of 1859 it was said that a raiyyat with a right of occupancy might erect a *pukka* house on his land and do what he liked with it so long as he did not injure it to the *samindar's* detriment (*Nyamatullah v. Govind Chandra Dutta*, 6 W. R., Act X, 40). In later cases, however, it was held that a *samindar* might object to the erection of brick houses on land let for purposes of cultivation, and might by injunction restrain his raiyyat from doing anything which would substantially alter the character of the tenure (*Shib Das Bandopadhyaya v. Baman Das Mukhopadhyaya*, 8 B. L. R., 242 : 15 W. R., 360; *Jagat Chandra Rai v. Ishan Chandra Banurji*, 24 W. R., 220; *Lal Sahu v. Deo Narayan Singh*, 3 Calc., 781 : 2 C. L. R., 294). An occupancy raiyyat had also no right to excavate a tank on his land (*Tarini Charan Basu v. Deb Narain*, 8 B. L. R., App, 69), in contravention of the terms of his lease (*Monindro Chandra Sarcar v. Manirudin Biswas*, 11 B. L. R., App, 40 : 20 W. R., 230), or to dig earth for the purpose of making bricks (*Kadambini Debi v. Nabin Chandra Adukh*, 2 W. R., 157; *Anand Kumar Mukhurji v. Bissonath Banurji*, 17 W. R., 416). If he had a *mukarari* interest in the land, he might build a well or do anything else which did not entirely destroy the land so as to endanger the *samindar's* ground rent (*Dhipat Singh v. Halalkhuri Chaudri*, W. R., Sp. No., 1864, 279). It cannot be laid down as a broad proposition of law that the building of an indigo factory on land let out for agricultural purpose must generally render it unfit for the purpose of the tenancy. It is a question of fact and must depend upon the circumstances of each case. *Hari Mohan Misser v. Surendra Narain Singa*, 34 I. A., 133 : 34 Calc., 718 : 11 C. W. N., 794 : 6 C. L. J., 19.

But if a landlord stood by and allowed his tenant to erect *pukka* buildings on the land, he could not turn him out of possession (*Beni Mudhab Banurji v. Jai Krishna Mukhurji*, 12 W. R., 495 : 7 B. L. R., 152 ; *Sib Das Bandopadhyaya v. Baman Das Mukhopadhyaya*, 8 B. L. R., 242 : 15 W. R., 360). Similarly, if he allowed him to excavate a tank without making any attempt to restrain him (*Kedar Nath Nag v. Khettro Pal Sritiratna*, 6 Calc., 34 ; 6 C. L. R., 569), or to build a homestead or use part of the land for tanks or gardens (*Prasanna Kumar Chaturji v. Jagan Nath Basak*, 10 C. L. R., 25), or to excavate earth for brick-making (*Nicholl v. Tarini Charan Basu*, 23 W. R., 298), or to convert his land into a mango grove (*Naina Misra v. Rupikun*, 9 Calc., 609 : 12 C. L. R., 300), he would not be allowed to eject or interfere with him.

Now, an occupancy raiyat's rights in this respect are regulated by secs. 76 and 77 of this Act. Under sec. 77 (1) a raiyat at fixed rates and an occupancy raiyat have a right to make "improvements" in their land, and "improvement" is defined in section 76 (1) to mean any work which adds to the value of the holding, which is suitable to the holding and which is consistent with the purpose for which it was let, such as *e.g.*, wells, tanks, water-channels [76(2)(a)], and suitable dwelling-houses, for the raiyat and his family with all necessary out-offices, [76 (2) (f)]. Under sec. 108, cl. (p) of the Transfer of Property Act, which section however has not yet been extended to agricultural leases (s. 117), a lessee must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes.

Trees.—Under the former law it was decided that, though a tenant had a right to enjoy all the benefits of the growing timber during his occupation, he had no right to cut down the trees and convert the timber to his own use (*Abdul Rahman v. Dataram Bashi*, W. R., Sp. No., 1864, 367) ; but he had a right to the possession of trees on his land (*Mahomed Ali v. Bolaki Bhagat*, 24 W. R., 330). Now, under the terms of this section a raiyat with a right of occupancy may cut down trees on this land without his landlord's consent, unless there be a custom to the contrary, of which it is for the landlord to give evidence (*Nasir Chandra Pal Chaudhri v. Ram Lal Pal*, 22 Calc., 742). As to the ownership of the trees themselves, if the tenant has a perpetual lease at a fixed rent and the lessor has reserved no reversionary interest in the land or the trees growing on it, the lessees are entitled to the ownership of the trees (*Saroda Sundari Debia v. Gomi*, 10 W. R., 419 ; *Golak Ram v. Nabu Sundari Dasi*, 21 W. R., 344). See also *Harbans Lal v. Maharaja of Benares*, (23 All., 126). But in the case of raiyats with only rights of occupancy, according to the decision in *Nasir Chandra Pal Chaudhri v. Ram Lal Pal*, and the long series of decisions cited

in that case, the trees are the property of the proprietor of the land on which they grow, though the tenant has a right to enjoy all the benefit that the growing timbers may afford him during his occupancy, and to cut them down subject to a custom to the contrary. But the proprietor's rights are subject to modification or complete extinction by contract and custom. The case of *Nafur Chandra Ghosh v. Nand Lal Gosami*, (22 Calc., 751, note) affords an example of the modification of his rights in this respect by custom; for, in this case, it was found that by the custom of the *zamindari*, the *zamindar* was entitled to recover only one-fourth share of the value of the trees cut down by the raiyats, when the raiyats had them cut down without his consent or permission. A different rule has, however, been laid down in the North-West Provinces with regard to the fallen wood of self-sown trees. It has there been held that a *zamindar* claiming a right to the fallen wood of self-sown trees growing on an occupancy holding must prove some custom or contract, by which he is entitled to such wood, there being no general rule in India to the effect that there is a right in the landlord or a right in the tenant by general custom to the fallen wood of self-sown trees (*Nathan v. Kamala Kuar*, 13 All., 571). When there was a custom in a village that the raiyats could, when they required fire-wood for the purposes of cremation and on occasion of village feasts, appropriate *agachha* or valueless trees, grown on the land of the raiyats after they had been inducted into possession, with the permission of the *barua* or village headman, and on such permission being asked nothing had to be paid by the raiyats, it was held in a case in which certain *agachha* trees had been cut down without such permission being asked for, that the landlord could have sustained no damage by reason of the acts of the raiyats in cutting and misappropriating the trees (*Samsar Khan v. Lochin Das*, 23 Calc., 854.) A tamarind tree is not an *agachha* or shrub (*Nilmani Maitra v. Muthura Nath Joardar*, 4 C. W. N., cliv : 5 C. L. J., 413). The case of *Man Mohini Gupta v. Raghu Nath Misra*, (23 Calc., 209) affords an illustration of a landlord's right in trees being extinguished by contract. In this case, a lease of a mauzah was granted for the express purpose of clearing jungle land and bringing it under cultivation, and it was held that, as there was no reservation in the lease of the right in the trees, the lessee had the right to appropriate them, when cut. A perpetual injunction restraining the defendant from planting trees the roots of which are likely to penetrate the foundation of plaintiff's building and wall, is unworkable (*Lakshmi Narain Banurji v. Tara Prasanna Banurji*, 31 Calc., 944).

Obligation of
raiyyat to pay
rent.

24. An occupancy-raiyyat shall pay rent for his holding at fair and equitable rates,

Extended to Orissa, (Not., Sept. 10th, 1891).

The expression "fair and equitable rates" is apparently taken from sec. 5 of Act X of 1859 and of Act VIII, B. C., of 1869, which laid down, as is done in sec. 27 of this Act, that the rate previously paid by the raiyat shall be deemed fair and equitable until the contrary is proved.

Protection
from eviction
except on speci-
fied grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Extended to Orissa, (Not., Sept. 10th, 1891).

Protection from eviction.—Before a tenant can be ejected on the grounds mentioned in clauses (a) and (b) of this section, the landlord must serve a notice on the tenant specifying the misuse or breach complained of, and where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case to pay reasonable compensation; and no suit for ejectment can be brought unless the tenant has failed to comply within a reasonable time with the notice (sec. 155). Under sec. 178, sub-section (1), clause (c), nothing in a contract made before or after the passing of the Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act. Under the former rent law, it was ruled that, though in strict law a farmer forfeits his lease by the withdrawal of the security given by him at the time of taking the farm, yet cases of forfeiture are not favoured, when no injury has resulted, or where a money compensation is a sufficient remedy (*Alum Chandra Saha v. Moran & Co.*, W. R., Sp. No., 1864, Act X, 31). But in another case it was said that parties must be bound by the terms which they have deliberately agreed upon between themselves (*Ram Kumar Bhattacharji v. Ram Kumar Sen*, 7 W. R., 132). As to breach of conditions of leases it was decided that in the absence of a provision for the cancelment of a lease, or that the landlord

shall have a right of re-entry on breach of any of its stipulations, a breach does not cancel a lease or give a right to eject (*Augar Singh v. Mohini Datta Singh*, 2 W. R., Act X, 101). But when forfeiture is provided as the penalty for the breach of any particular clause, it may be enforced (*Mahomed Faiz Chaudhri v. Shib Dulari Tewari*, 16 W. R., 103; *Bir Chandra Manik v. Hussain*, 17 W. R., 29); and there is nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a lease (*Chandra Nath Misra v. Sardar Khan*, 18 W. R., 218). On the expiry of the term of a lease, by which a *ghat* together with certain *jote* lands were let out at a certain annual *juma* for both the *jote* lands and the *ghat*, the defendants held over for many years on the same terms. The plaintiff gave the defendants notice to quit and sued for *khas* possession of the *ghat*: held, that the plaintiffs were entitled to *khas* possession of the *ghat* though the defendants were occupancy raiyats as regards the *jote* lands (*Ilaves v. Ghina Barhi*, 33 Cal., 459). A suit for ejectment of a tenant cannot be maintained, unless the tenancy has been determined, i. e., unless there has been a previous notice to quit or a demand for possession (*Deo Nandan Prosod v. Meghu Mahton*, 11 C. W. N., 225). See note "Determination of relation of landlord and tenant," at the commencement of Chap. VIII.

Use of land in a manner unfitting it for purposes of tenancy.—In a suit under this Act a tenant was sued for converting land admittedly let for agricultural purposes into an orchard, and he was held to have used it in a manner unfitting it for the purposes of the tenancy and to be liable to ejectment (*Saman Gope v. Raghubar Ojha*, 24 Cal., 160: 1 C. W. N., 223). Whether the building of an indigo factory on a portion of land let out for agricultural purposes, renders the land unfit for the purposes of the tenancy depends upon the circumstances of the individual case and is a question of fact (*Hari Mohan Misser v. Surendra Narain Sing*, 6 C. L. J., 19: 11 C. W. N., 794: 34 Cal., 718 P. C.).

Denial by tenant of his landlord's title no ground of forfeiture or ejectment.—The denial by a tenant of his landlord's title is no ground of forfeiture of his tenancy under the Tenancy Act, as under the former law, and he cannot now be ejected for this reason (*Debiruddin v. Abdur Rahim*, 17 Cal., 196; *Dhora Kairi v. Ramjewan Khairi Mahatan*, 20 Cal., 101). This is still the law in districts in which Act VIII, B. C., of 1869 prevails, but a denial in the written statement would not operate as a forfeiture (*Nizamudin v. Mantajudin*, 28 Cal., 135: 5 C. W. N., 263). But the rule that the denial of the relation of landlord and tenant does not operate as a forfeiture, does not apply when the defendants have denied in a previous suit that they were the plaintiffs ten-

ants, and when that denial has been given effect to by a decree of Court. When it has been found that the land belongs to the plaintiffs, and in the previous suit it was found that the defendants were not the plaintiffs' tenants, the defendants have no right to remain on the land, and the plaintiffs are entitled to *khas* possession (*Nil Madhub Basu v. Anant Ram Bagdi*, 2 C. W. N., 755 ; *Faiz Dhali v. Aftabuddin*, 6 C. W. N., 575 ; *Haranath Chakravarti v. Kamini Kumar Chakravarti*, 3 C. L. J., 252 ; *Ramgati v. Pran Hari Seal*, 3 C. L. J., 201). But the correctness of these decisions was doubted in *Mallikadari v. Mukham Lal Chaudhuri*, 2 C. L. J., 389 : 9 C. W. N., 928,) in which it was laid down that the doctrine of forfeiture by disclaimer of landlord's title does not apply to raiyati tenancies governed by the Bengal Tenancy Act and the principal of estoppel cannot be applied to make the doctrine of forfeiture indirectly applicable to such tenancies. A tenant defendant, who sets up an adverse title in himself, may be estopped from setting up an occupancy right in appeal (*Satya Bhama Dasi v. Krishna Chandra Chatturji*, 6 Calc., 55). See also *Sujjad Ahmad Chaudhuri v. Ganga Charan Ghosh*, (1 C. L. J., 116 : 9 C. W. N., 460.) A lessee of a service tenure incurs a forfeiture of his tenancy by denial of his landlord's title and the landlord would be entitled to eject him, if he declared by some act or other, antecedent to the institution of the suit, his intention to determine the tenancy. Notice to quit in such a case is not necessary. Such a case falls within the Transfer of Property Act (*Anandamoyi v. Lakhi Chandra Mitra*, 33 Calc., 339). Nor is a notice to quit necessary for the ejectment of a tenant whose denial of the relation of landlord and tenant, succeeded in defeating a previous suit by the landlord (*Khatir Mistri v. Sadruddi*, 34 Calc., 922). As to what would constitute a sufficient denial, see *Mathewson v. Jadu Mahto* (12 C. W. N., 525) where the denial of plaintiff's title as landlord, while admitting that the defendant was a tenant of the land, was not considered a sufficient disclaimer.

Now, a tenant who renounces his character as a tenant of the landlord by setting up, without reasonable or probable cause, title in a third person or himself, is liable to have a decree for damages passed against him. See the new section 186 A, added by s. 57, Act I, B. C., 1907 and Act I, E. B. C., 1908.

Non-payment of rent.—An occupancy raiyat cannot be ejected for arrears of rent ; but his holding can be sold in execution of a decree for the rent thereof (sec. 65). Section 6 of Act X of 1859 and Act VIII, B. C., of 1869 provided that a raiyat had an occupancy right in land "so long as he paid the rent payable on account of the same." It was, accordingly held that, though non-payment of rent did not bar the acquisition of an occupancy right, payment of rent was necessary to

maintain it, and non-payment rendered a raiyat liable to be evicted (*Narain Rai v. Opnit Misra* 9 Cal., 304 : 11 C. L. R., 417). So, where a raiyat had been dispossessed and had failed to pay rent for five or six years, it was held in a suit by him for possession that he had no subsisting right of occupancy (*Hem Chandra Chaudhuri v. Chand Akund*, 12 Calc., 115). In another case, however, it was said that mere non-payment of rent did not necessarily amount to a forfeiture of the right of occupancy (*Masyatulla v. Nurzahan*, 9 Calc., 808 : 12 C. L. R., 389), and in a case in which the decision in *Hem Chandra Chaudhuri v. Chand Akund* was specially considered, it was said that, though non-cultivation of the land, coupled with non-payment of the rent, might be sufficient to justify the conclusion that the tenant had relinquished the land, mere non-payment of rent was not in itself sufficient to show that there was no subsisting right of occupancy (*Nilmoni Dasi v. Sonatan Doshayi*, 15 Calc., 17). When the relation of landlord and tenant has once been proved to exist, mere non-payment, though for many years, is not sufficient to show that it has ceased. A tenant who alleges this must prove it, particularly if he is in possession of the land (*Rango Lal Mandal v. Abdul Ghafur*, 4 Calc., 314 : 3 C. L. R., 119). See note, p. 26. Non-payment of rent will not relieve an occupancy raiyat of his status of tenant so as to give him a title to the land (*Poresb Narain Rai v. Kashi Chandra Talukdar*, 4 Calc., 661). Nor does it do so, even when coupled with the fact that the landlords never recognised him as a tenant (*Ambika Sundari Guha v. Dino Nath Sen*, 9 C. W. N., ccxxxix).

Transfer not void.—The transfer of an occupancy holding which is not transferable by local custom or usage is not a void transaction. It is voidable by the landlord but binding between the parties and their privies (*Haridas Banerjee v. Uday Chandra*, 12 C. W. N., 1086).

Invalid transfer of a whole or part of holding.—The sale or parting with the whole or part of a holding is not a ground of forfeiture according to the Tenancy Act, and so where a raiyat had sold half of his holding but remained in possession of the other half, and when the rent of the whole of the holding had been deposited in the Collectorate to the credit of the landlord, it was held that he was not liable to be ejected (*Kubil Sardar v. Chandra Nath Chaudhri*, 20 Calc., 590). See also *Bansi Das v. Jagdip Narain Chaudhri*, 24 Calc., 152 ; *Durga Prasad Sen v. Daula Ghazi*, 1 C. W. N., 160 ; *Gozaffar Hussain v. Dalglish*, 1 C. W. N., 162 ; *Kissen Pertab Sahi v. Tripe*, 2 C. W. N., cliv ; and *Kamleshwari Prasad Singh v. Haraballabh Narain Singh*, 2 C. L. J., 369. Where there are several tenants of a holding and each of them holds a separate portion, each such portion should not be treated as a separate holding and a transfer of one of such portions will not operate as an

abandonment which will entitle the landlord to re-enter that portion (*Satis Chandra v. Bejoy Kumar*, 13 C. W. N., cxx). But if a tenant transfers his holding, ceases to pay rent for it and accepts a new tenancy from the transferee, the landlord is entitled to eject the transferee as a trespasser (*Kali Nath Chakravarti v. Upendra Chandra Chaudhri*, 24 Calc., 212 : 1 C. W. N., 163 ; *Samujan Rai v. Mahatan*, 4 C. W. N., 493). See also *Dwarka Nath Misra v. Harish Chandra*, (4 Calc., 925) ; *Sristidhar Biswas v. Madan Sardar*, (9 Calc., 648) ; *Pratap Chandra Das v. Kamala Kanta Saha*, (4 C. L. J., 13 n) ; and *Harihar Mukhurji v. Jadu Nath Ghosh*, (7 W. R., 114), in which last mentioned case it was said that a tenant having a right of occupancy cannot create a tenure intermediate between himself and the *zamindar*. But if the tenant after selling his non-transferable holding, resides on the property and cultivates it for sometime and then goes to reside elsewhere, the rent being paid in his name, there is no abandonment and the landlord can not re-enter (*Mathura Mandal v. Ganga Charan Gope*, 33 Calc., 1219, Rampini J. dissenting). So, under the old law a mere invalid transfer of a non-transferable holding did not give a *zamindar* a right to take actual possession, so long as the rent was paid by the recorded tenant or his heirs and not by a stranger (*Jai Krishna Mukhurji v. Raj Krishna Mukhurji*, 5 W. R., 147). Nor did it work a forfeiture of the tenancy (*Gora Chand Mostafi v. Baroda Prasad Mostafi*, 11 W. R., 94 : 13 B. L. R., 279 note ; *Saddai Parira v. Baistab Parira*, 15 W. R., 261 : 12 B. L. R., 84 note ; *Dwarka Nath Misra v. Kunai Sirdar*, 16 W. R., 111). But when an occupancy raiyat sold his holding, gave up possession and disclaimed all interest in it, his right of occupancy ceased and the landlord could eject the purchaser (*Hara Mohan Mukhurji v. Chintamani Rai*, 2 W. R., Act X, 19 ; *Harihar Mukhurji v. Jadu Nath Ghosh*, 7 W. R., 114 ; *Durga Sundari v. Brindaban Chandra Sarkar*, 11 W. R., 162 ; *Suhodra v. Smith*, 20 W. R., 139 : 12 B. L. R., 82 ; *Narendra Narain Rai v. Ishan Chandra Sen*, 22 W. R., 22 : 13 B. L. R., 274 ; *Ram Chandra Rai v. Bhola Nath Lashkar*, 22 W. R., 200). So, also, if an occupancy raiyat not authorised to transfer his holding creates a usufructuary mortgage of it, the landlord is entitled to eject him (*Krishna Chandra Datta v. Kishori*, 10 C. W. N., 499 : 3 C. L. J., 222 ; *Rusik Lal Datta v. Bidhu Mukhi Dasi*, 33 Calc., 1094 : 4 C. L. J., 406 : 10 C. W. N., 719 ; *Rajendra Kishore v. Chandra Nath*, 12 C. W. N., 878). The mortgagee of a portion of a non-transferable occupancy holding can maintain a suit against the landlord and his mortgagor for a declaration that a decree for rent obtained by the former against the latter was fraudulent and collusive (*Brahmadeo Narain Singh v. Ramdawn Singh*, 12 C. W. N., clxxvi). But if the landlord purchases such a holding in execution of a money decree he will not

be estopped from opposing the suit of a mortgagee from the raiyat (*Asmatunnissa Khatoon v. Harendra Lal Biswas*, 35 Calc., 904 : 12 C. W. N., 721 : 8 C. L. J., 29). But where defendants 2 and 3, who had a non-transferable occupancy holding sold it to defendant No. 1, and took an under-lease from the latter, it was held that the landlord was entitled to get a decree for possession against defendant No. 1, and was not entitled to get *khas* possession against defendants 2 and 3, but only to receive rent from them (*Dina Nuth Rai v. Krishna Bijai Saha*, 9 C. W. N., 379). This was followed in *Mudar Mandal v. Mahima Chandra Mazumdar*, (33 Calc., 531 : 3 C. L. J., 343), in which it was ruled that the mere sale of a right of occupancy to a third person, notwithstanding that the vendors remain in occupation under a sub-lease from the purchaser, does not amount to abandonment or entitle the landlord to eject the original tenants. See also *Nadhu Mandal v. Kartik Mandal*, (9 C. W. N., 56). But when a raiyat transferred a non-transferable holding to a third person, took a sub-lease from his transferee and refused to pay rent to his landlord, as before, and when dispossessed sought to recover possession not under his former right as raiyat, but as under-raiyat of his transferee, and persisted in refusing to pay rent to his landlord, it was held that he was not entitled to recover possession (*Rajani Kant Biswas v. Ekkari Das*, 7 C. L. J., 78 : 34 Calc. 689).

A landlord cannot sue his tenants for the rent of a holding and at the same time sue a *zar-peshgidar* for the same on the ground that the *zar-peshgidar* is in possession of a portion of the same (*Ramadis v. Thakurdas*, 1 C. L. J., 136.)

Representative.—It has been held, however, that a purchaser of a non-transferable occupancy holding is a representative of the raiyat and can, as such, maintain an application for setting aside a sale for arrears of rent at the instance of the landlord (*Huradhan Rakhit v. Girish Chandra Mukerjee*, 13 C. W. N., 98 : 8 C. L. J., 327). But see *Prasanna Kumar Middar v. Bama Charan Majidat* 9 C. L. J., 68 n. See also "Representative" pp. 123 and 124.

Onus of proof.—When the plaintiff sued for ejectment and it was disputed whether the land was agricultural, it was held that the onus lay on the defendant, (1) because the lands were situate within a Municipality, and, (2) because he was a tenant and sought exemption from ejectment (*Sashi Bhusan Mukherjee v. Sriram Samanta*, 10 C. W. N., cclxxxviii).

Annual tenancy. Notice to quit.—To determine an annual tenancy the notice should require the tenant to quit at the end of the year of the tenancy (*Hemangini Chaudhurani v. Srigobind Chaudhury*, 6 C. W. N., 69 : 29 Calc., 203).

Co-sharer landlords.—A co-sharer landlord cannot eject a tenant even in respect of his own share, or in case of a service holding, maintain a suit for the *khas* possession of his own share (*Ghulam Mohiuddin v. Khairan*, 8 C. W. N., 325).

Limitation.—The period of limitation for ejectment under clause (a) of this section is two years under art. 32, Sch. I of the Limitation Act (*Soman Gope v. Raghubar Ojha*, 24 Calc., 160 : 1 C. W. N., 223 ; *Sarup Das v. Jageswar Rai*, 26 Calc., 564 : 3 C. W. N., 464). The period of limitation for a suit for ejectment under clause (b) of this section is one year under art. 1, Sch. III, appended to this Act.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property ; provided that in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of
occupancy-right
on death.

Extended to Orissa (Not. Sept. 10th, 1891).

Heritability of occupancy-rights.—There can be no question now as the heritability of occupancy rights. See note to sec. 20, sub-section (3) and *Ananda Kumar Naskar v. Hari Das Halldar*, (27 Calc., 545 : 4 C. W. N., 608). Formerly, notwithstanding the provisions of sec. 6 of Act X of 1859 and Act VIII, B C., of 1869, doubts were expressed by Peacock, C. J., as to their heritability (*Ajudha Prasad v. Imambandi Begum*, 7 W. R., 528), and in one case it was decided that on the death of an occupant raiyat the *zamindar* could let the land to whom he pleased and that a distant relation of the deceased raiyat was not entitled to succeed by inheritance (*Jati Ram Sarmah v. Munglu Sarmah*, 8 W. R., 60). There can not be a partial acceptance or renunciation of an inheritance, nor can one of several heirs accept a part only of an inheritance to the prejudice of the other heirs and of the creditors of the deceased. An acceptance in part has the effect of an acceptance of the whole, and carries with it the same liability (*Moazam Hassain v. Bhauddin*, 5 C. W. N., 189).

Liability of heirs of occupancy raiyats.—Under the present Act, it has been held that “inasmuch as heirs of a raiyat who may have died intestate having rights of occupancy, succeed to his holding, and inasmuch as a raiyat is bound to pay rent unless he surrenders in the manner prescribed by section 86, the heirs are liable to pay rent whether they hold

the lands or not. The *zamindar* would not be at liberty to occupy the lands of such a tenant, unless he has obtained from the heirs something amounting to an actual surrender, and unless he has himself proceeded in the manner prescribed by section 87. Therefore, heirs of a deceased dying intestate, having rights of occupancy, are entitled to hold until they have, expressly, or in a manner from which a surrender may be presumed, as is stated in sec. 86, relieved themselves from such liability, and unless they have surrendered or done something from which a surrender in the terms of section 86 can be presumed, they are liable for the rent. Non-cultivation of the land does not necessarily amount to a surrender" (*Peari Mohan Mukherji v. Kumaris Chandra Sarcar*, 19 Calc., 790). But the Allahabad High Court in *Lekhraj Sing v. Rai Singh*, (14 All., 381) has decided that it is only an occupancy raiyat in possession *who has accepted the occupancy holding* that is liable to be sued for arrears of rent which accrued during the lifetime of the person from whom the right of occupancy has devolved upon him. In his judgment in this case, Edge, C. J., observed :—"The person on whom the right of occupancy devolves is not bound to accept the tenancy, but if he does accept it, he, in my opinion, must accept it subject to its burdens, and one of these burdens is the legal liability to pay the rent which is in arrear." Knox, J., also pointed out that the person who had succeeded to the position of tenant might plead as answer to a suit for arrears that he was not the tenant of the plaintiff and had never attorned to him.

Decrees for arrears of rent obtained against a Hindu widow are personal debts, payment of which can be enforced only against the property left by her, and not against her husband's estate which has passed to the next heirs (*Krishna Gobind Mozumdar v. Hem Chandra Chaudri*, 16 Calc., 511). But they are a first charge on the tenure or holding on which they have accrued and may be executed against it (sec. 65).

Whether occupancy rights can be bequeathed.—Neither in this section nor in any other section of the Act is there any provision, analogous to that in section 11 in regard to permanent tenures, authorizing the testamentary bequest of occupancy holdings. From clause (d) sub-section (3) of section 178, which provides that nothing in any contract made between a landlord and tenant after the passing of this Act shall take away the right of a raiyat to bequeath his holding in accordance with local usage, it would seem that the framers of the Act intended the matter to be regulated by the provisions of section 183. If a will is made the heirs of the raiyat will be bound by the same (*Haridas Bairagi v. Uday Chandra Das* 12 C. W. N., 1086 : 8 C. L. J., 261).

Failure of heirs.—On a failure of heirs occupancy rights under this section are extinguished, in which respect they differ from tenures

which in similar circumstances escheat to the Crown. See note to section 17, p. 79.

Encumbrances—created by the raiyat become extinct upon his death without heirs (*Muktakeshi Dasi v. Pulin Behari Singh* 13 C. W. N. 12).

Occupancy rights transferable by custom.—This chapter contains no provision as to the transferability or non-transferability of occupancy rights. The question has been left to be decided by custom. Sir Steuart Bayley, when moving that the report of the Select Committee on the Bengal Tenancy Bill should be taken in consideration, on this point observed :—"Turning now to the incidents attached to the right of occupancy it will be seen that we have made a most important change in regard to one of these incidents—transferability. Instead of legalising it and regulating it by law, we have left it everywhere to custom." This has been effected by the provisions of section 183, which make the whole Act subject to "custom, usage and customary right," except so far as inconsistent with, or expressly or by necessary implication abolished by its provisions. The application of "usage" to the transferability of occupancy rights is emphasized by illustration 1 to section 183, which is to the effect that "a usage, under which a raiyat is entitled to sell his holding without the consent of his landlord, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act."

Moreover, by clause (d), sub-section (3), section 178 of this Act, it is provided that nothing contained in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of a raiyat to transfer his holding in accordance with local usage. Accordingly, in *Palakdhari Rai v. Manners*, (23 Calc., 179), decided under the Tenancy Act, and in which the defendants to whom certain occupancy holdings had been transferred pleaded that they were transferable by custom or usage, it was held with reference to this illustration that a transfer in accordance with usage was valid, even without the consent of the landlord. In this case, the observation of their lordships of the Privy Council in *Jaggumohan Ghosh v. Manik Chand* (7 Mco. I. A., 263) on the subject of "mercantile usage" to the effect that "mercantile usage needs not the antiquity, the uniformity or the notoriety of custom," and that "it is enough if it appears to be so well-known and acquiesced in that it may reasonably be presumed to have been an ingredient tacitly imported by the parties into their contract" were referred to and it was said that "in applying this case, it must be borne in mind that it relates to a usage in dealing in a particular class of mercantile transactions and

contracts made in the course of such business. Consequently, in introducing these principles in the present case, which does not relate to contracts entered into between parties to the litigation, but affects a third party, the landlord, it would be necessary to prove the existence of the usage on his estate, or that it was so prevalent in the neighbourhood that it can be reasonably presumed to exist on that estate." In this case it was further pointed out that under both Act X of 1859 and Act VIII, B. C., of 1869, "occupancy rights were not transferable against the will of the landlord save by custom, not mere usage." "The Courts held" it was said, "that the custom of the country or the locality alone conferred the right of transfer of such holdings without the consent of the landlord. Sales of such holdings in execution of decree against such tenants used occasionally to be held. When they were held at the instance of the landlord as decree-holder, the transfer so affected would be with his consent, but when the sales were in execution of decrees by third parties, the right of transfer without such consent was generally disputed." Rulings under the law in which it has been admitted or held that occupancy rights are transferable by custom will be found in *Haro Mohan Mukhurji v. Lalan Mani Dasi*, 1 W. R., 5; *Jagat Chandra Rai v. Ram Narain Bhattacharji*, 1 W. R., 126; *Jai Krishna Mukherji v. Raj Krishna Mukhurji*, 1 W. R., 153; and *Sriram Basu v. Bissonath Ghosh*, 3 W. R. Aēt X, 3. Rulings to the effect that occupancy rights are not transferable save by custom are to be found in *Sriram Basu v. Bissonath Ghosh*, 3 W. R., Act X, 3; *Ajudhya Prosad v. Imambandi Begam*, 7 W. R., 528, (a Full Bench decision, overruling that in *Tapa Mani Dasi v. Biressar Mazumdar*, 1 W. R., 86); *Durga Sundari v. Brindaban Chandra Sircar*, 11 W. R., 162 : 2 B. L. R., App., 37; *Nanku Ray v. Mahabir Prosad*, 11 W. R., 405 : 3 B. L. R., App., 35; *Annapurna Dasi v. Uma Charan Das*, 18 W. R., 55; *Snankarpatti Thakurani v. Saifullah Khan*, 18 W. R., 507; *Buti Singh v. Murat Singh*, 20 W. R., 478 : 13 B. L. R., 284 note; *Narendra Narain Rai v. Ishan Chandra Sen*, 22 W. R., 22 : 13 B. L. R., 274. Their lordships of the Privy Council have also recently held that under the old rent law a right of occupancy cannot be transferred (*Chandrabati Koer v. Harrington*, 18 Calc., 349 : L. R., 18 I. A., 27).

Transfer piecemeal.— But the existence of a custom in a particular district by which rights of occupancy in such district are transferable will not justify the holder of such a right of occupancy in sub-dividing his tenure and transferring different parts of it to different persons; and in case of such transfer the *samindar* is entitled to treat the transferees as trespassers and eject them (*Tirthanand Thakur v. Muti Lal Misra*, 3 Calc., 774). See note pp. 115, 116, 117 and notes to sec. 183—"Proof of custom," and "usage."

Occupancy rights, not transferable by custom, do not pass at execution sales.—It is sometimes contended that, though there may be no custom or usage under which occupancy rights are transferable, they may yet pass at execution sales, and that such transfers, though not valid against the landlord, will yet be valid as against the former tenant. This, however, does not appear to be the law. Thus, in *Kripa Nath Chaki v. Dyal Chand Pal* (22 W. R., 169), it was ruled that the sale of a *jote* in execution of a decree against a *jotedar* does not prove it to be transferable, nor does the purchaser acquire a right of occupancy by his purchase where the right is not dependent on custom, but is a mere creation of the rent law. Then, in *Dwarika Nath Misra v. Haris Chandra* (4 Calc., 925), it was held that the right of occupancy acquired by a cultivating raiyat under sec. 6 of Bengal Act VIII of 1869, cannot be transferred either by a voluntary sale or gift or in execution of a decree, and that “there is no ground for distinguishing a voluntary sale from a sale in execution; for, if a sale by private contract would validly pass it, then a sale in execution would equally pass it, and *vice versa*”. The same was held in *Bhiram Ali v. Gopi Nath Saha* (24 Calc., 355 : 1 C. W. N., 396), in which it was ruled that “in the absence of custom or local usage to the contrary, a raiyati holding, in which the raiyat has only a right of occupancy, is not saleable at the instance of the occupancy raiyat or any creditor of his other than his landlord seeking to obtain satisfaction of his decree for arrears of rent.” See also *Piari Mohan Mukhurji v. Jati Kumar Mukhurji* (11 C. W. N., 83). In a subsequent case, *Basarat Mandal v. Sabulla Mandal* (2 C. W. N., cclxxix) in which *Bhiram Ali v. Gopi Nath Saha*, was cited, it was held that the question of transferability was one which might be raised by the landlord, but could not be legitimately raised by a trespasser, and it was said that the plaintiff in this case having purchased the tenant right, whatever its precise nature, it had a market value and was capable of being recognized by the landlord. The plaintiff had therefore a right to be protected in the enjoyment of his purchase against all the world, except possibly his landlord. See also *Ambika Nath Acharji v. Aditya Nath Maitra* (6 C. W. N., 624) and *Narain v. Dinabandhu* (9 C. L. J., 82n). But in *Durga Charan Mandal v. Kali Prosana Sircar* (26 Cal., 727 : 3 C. W. N., 586), *Bhiram Ali v. Gopi Nath Saha*, was followed and it was held (1) that an occupancy holding not transferable by custom, as also the interest of the judgment-debtor in such holding, are not saleable in execution of a decree for rent obtained by certain co-sharer landlords; (2) that a judgment-debtor may raise such an objection, and (3) that the confirmation of the sale was no bar to the raising of such

an objection. See also *Sitanath Chaturji v. Atmaram Kar* (4 C. W. N., 571). But in another case, the defendant had owned a non-transferable holding, which was sold in execution of a decree against him, and one K was the purchaser; K transferred his interest and the transferee sued for possession: held that the defendant having had full knowledge of the execution proceedings and not having objected to the sale, was not competent to resist the purchaser after confirmation of sale (*Murulla v. Burullah*, 9 C. W. N., 972). In *Mujid Hossein v. Raghubar Chaudhri*, (27 Calc., 187), it has been decided that, when an application is made to execute a decree for money by the attachment and sale of an occupancy holding, the judgment-debtor is entitled under s. 244, C. P. C., to raise the question as to whether the holding is saleable by custom or usage, and to have that question determined by the Court executing the decree. In a suit for recovery of *khas* possession by the plaintiff who had purchased an occupancy holding in execution of a mortgage decree, the defendant claimed under a lease from a co-sharer landlord who also had purchased the holding in execution of a decree for his share of the rent: Held, that the question of the transferability of the holding did not arise (*Ayenuddin Nasya v. Srish Chandra Banurji*, 11 C. W. N., 76). When plaintiff had purchased a holding with the consent of the landlord, the question whether the holding was transferable by custom or usage without the consent of the landlord did not properly arise (*Bibijan v. Kishori Mohan Bandopadhyay*, 11 C. W. N., clix). See also *Gauhar Khalifa v. Kasimudin* (4 C. W. N., 557) and *Durga Charan Agradani v. Karamat Khan*, (7 C. W. N., 607). A sale in execution of a money decree of an occupancy holding not transferable by custom is valid and effectual, if the sale is held with the consent of the landlord (*Ananda Das v. Ratnakar Panda*, 7 C. W. N., 572), or if a settlement is made by the landlord with the purchaser as soon as can be reasonably expected after the sale (*Dwarka Nath Pal v. Tarini Sankar Rai*, 5 C. L. J., 289; 34 Calc., 199; 11 C. W. N., 513). But when a non-transferable holding is sold by a tenant by a *kabali*, he is estopped from setting up the invalidity of the sale by him (*Bhagirath Changa v. Hafizudin*, 4 C. W. N., 679). So also in the case of a mortgagor (*Krishna Lal Saha v. Bhairab Chandra*, 2 C. L. J., 190). A non-transferable occupancy holding cannot be sold in execution of a decree obtained by an *ijaradar* of a fractional sharer for the share of the rent separately payable to him so as to pass the holding (*Sadagar Sarkar v. Krishna Chandra Nath*, 3 C. W. N., 742; *Jarip v. Ram Kumar De*, 3 C. W. N., 747).

Representative.—The question whether a purchaser of a part or the whole of a non-transferable occupancy holding is a representative of the judgment-debtor within the meaning of sec. 244 of the Code of

Civil Procedure, or a person whose immoveable property has been sold within the meaning of secs. 310A. and 311 of the Code of Civil Procedure, has given rise to some conflict of opinion and the matter is now under consideration by a Full Bench. See Appeal From Order No. 455 of 1907, referred to the Full Bench on the 14th July 1909. (Compare—*Srimati Nessa Bibi v. Rudha Kisore Manikya*, 11 C. W. N., 312; *Bhiram Ali Shekh Sikdar v. Gopikant Shaha*, 24 Calc., 355; *Kuldip Singh v. Gillanders*, 26 Calc., 615 and *Sudagar Sarkar v. Krishna Chandra Nath*, 26 Calc., 937, on the one hand and in support of the negative, and on the other hand in support of the affirmative see *Bhagirath Changa v. Sheikh Hafizuddin*, 4 C. W. N., 679; *Ambika Nath Acharya v. Aditya Nath Maitra* 6 C. W. N., 624; *Ayenuddin Nasya v. Grish Chandra Banerjee* 11 C. W. N., 76; *Kabil Sardar v. Chandra Nath Nag Choudhuri*, 20 Calc., 590; *Durga Prosad Sen v. Doula Gaze*, 1 C. W. N., 160; *Sheikh Gozaffer Hossain, v. E. Dalglish*, 1 C. W. N., 162; *Umar Ali Majhi v. Munshi Basiruddin Ahmed*, 7 C. L. J., 282; *Kunja Behari Mandal v. Sambhu Charan Roy*, 8 C. W. N., 232; *Bansidhar v. Kedar Nath*, 1 C. W. N., 114; *Asgar Ali Khan v. Asabuddin Kazi*, 9 C. W. N., 134; *Haradhan Rakhit v. Grish Chunder Mukerjee*, 13 C. W. N., 98.)

Onus and proof of transferability.—The onus of proof of the transferability of an occupancy right is upon the person who alleges it to be transferable (*Shankarpatti Thakurani v. Saifullah Khan*, 18 W. R., 507; *Kirpamayee Debi v. Durga Govind Sarkar*, 15 Calc., 89; *Madhu Sudan Sen v. Kamini Kanta Sen*, 9 C. W. N., 895; 32 Calc., 1023). If the usage of transferability is set up, it is necessary to prove its existence on the estate of the landlord or that it is so prevalent in the neighbourhood that it can be reasonably presumed to exist on that estate (*Palakdhari Rai v. Manners*, 23 Calc., 179). To prove a custom or usage of transferability, it is not sufficient to show that such holdings are sold in the village or neighbouring villages. The essence of such a usage is that transfers made to the knowledge of, but without the consent of, the landlord, are valid and must be recognised by him (*Piari Mohan Mukharji v. Jati Kumar Mukharji*, 11 C. W. N., 83). A transfer of an occupancy holding cannot be justified by local usage, which is still growing up. The usage should have ripened into maturity (*Ramhari Singh v. Jubbar Ali*, 6 C. W. N., 861). The recognition by the landlord of a raiyat as a tenant of a portion of a holding is not sufficient to prove the custom of transferability (*Ganesh Das v. Ram Pratap Singh*, 5 C. W. N., clxxv). Where the lower appellate Court said: "There is abundant evidence on the record to show that such lands are actually sold in the neighbourhood, and the *kubulas* filed in this

case support this fact" : *held*, that this did not amount to a finding of a local usage (*Dinonath Ghosh v. Nobin Chandra Ghosh*, 6 C. W. N., 181).

Transfers of occupancy rights when transferable by custom how to be effected.—As already pointed out in the note to sec. 3, sub-sec. (18), pp. 42, 43, the sale or transfer of tangible immovable property can, under sec. 54 of the Transfer of Property Act, be effected, if the property is worth Rs. 100, and upwards, by a registered deed of sale, or if worth less than Rs. 100, by a registered deed of sale or by delivery of the property. This will apply to the sale of occupancy holdings. No registration of the transfer in the landlord's *serishtā* is required to be made and no suit to obtain such registration is now maintainable (*Ambika Prasad Chaudhri v. Keshri Sahai*, 24 Calc., 642). The provisions of secs. 12 to 16 of the Act apply only to permanent tenure-holders and raiyats holding at fixed rates, but under sec. 73 of this Act, when an occupancy raiyat transfers his holding without the consent of his landlord, the transferor and transferee are jointly and severally liable to the landlord for arrears of rent accruing after the transfer until notice of the transfer is given to the landlord. Under the old law, transfers of ordinary raiyati holdings did not require to be registered in the landlord's *serishtā* (*Tara Mani Dasi v. Bireswar Mazumdar*, 1 W. R., 86 ; *Haro Mohan Mukhurji v. Chintamani Rai*, 2 W. R., Act X, 19 ; *Karu Lal Thakur v. Lachmipat Dugar*, 7 W. R., 15 ; *Uma Charan Sett v. Hari Prasad Misra*, 10 W. R., 101 ; *Jai Krishna Mukhurji v. Durga Narain Nag*, 11 W. R., 348), and in the case of a holding transferable by custom, the receipt of rent from the transferee by the landlord with knowledge of the transfer puts an end to the connection of the transferor with the holding (*Abdul Aziz Khan v. Ahmed Ali*, 14 Calc., 795).

Receipt of rent from transferee of non-transferable holding validates transfer.—It is clear that the receipt of rent by a landlord from the transferee of a holding not transferable by custom will validate the transfer (*Nobo Kumar Ghosh v. Krishna Chandra Banurji*, W. R., Sp. No., 1854, Act X, 112 ; *Mritunjai Sirkar v. Gopal Chandra Sarkar*, 10 W. R., 466 ; *Bharat Rai v. Ganga Narain Mahapatra*, 14 W. R., 211 ; *Allender v. Dwarkanath Rai*, 15 W. R., 320 ; *Amin Baksh v. Bhairo Mandal*, 22 W. R., 493 ; *Hamid Ali Chaudhuri v. Asmat Ali*, 11 C. W. N., clxviii). The same effect will result from the landlord having allowed sums paid in to the Collectorate as rent by the transferee to be carried to his credit (*Ram Gobind Rai v. Dashubhuja Debi*, 18 W. R., 195) ; and from his having made the transferee a party to a suit for rent and from his accepting a decree against him jointly

with others (*Ram Kishor Acharji v. Krishna Mani Debi*, 23 W. R., 106 ; *Mahomed Azmal v. Chandi Lal Pandey*, 7 W. R., 250). But in *Gaur Lal Sarkar v. Rameshar Bhumik*, (6 B. L. R., App., 92), it was said that the mere receipt of rent on the part of the *zamindar* from a purchaser from a tenant having a right of occupancy will not sanction the sale to the purchaser so as to give him a right of occupancy, as the *zamindar* might not have been fully aware of the transfer ; and the payment of rent *marfatwary* confers no raiyati title on the *marfatwar* (*Khudiram Chaturji v. Rukhini Boishtobi*, 15 W. R., 197 ; *Kurani Dasi v. Sajani Kant Sing*, 12 C. W. N., 539); and when rent is taken from a purchaser as *sarbarahkar*, the purchaser is not recognised by the landlord as his tenant (*Rasomai Purkhait v. Srinath Maira*, 7 C. W. N., 132 ; *Deb Narain Dutt v. Baidya Nath Napit*, 13 C. W. N., cciii). Finally, in *Bhajokhari Banik v. Aka Ghulam Ali* (16 W. R., 97) it was pointed out that the purchaser of a raiyati tenure is bound to communicate with the *zamindar* and obtain his consent to the transfer of the tenure, and that, without this being done, a *gumashta's* receipts of rent are not binding on the *zamindar*. Where the landlord received rent from the usufructuary mortgagee in possession and gave him receipts wherein the payment of rent was expressed to be "through" him as "the mortgagee," it has been held that the landlord recognised the transfer and was not entitled to recover *khas* possession (*Baroda' Churn Dutt v. Hemlata Dasi*, 13 C. W. N., 833). The question whether a transferee was accepted as a tenant is a question of law (*Deb Narain Dutt v. Baidya Nath Napit*, 13 C. W. N., cciii). In *Sheo Charan Lal v. Prabhu Dayal*, (1 C. W. N., 142), it was ruled that having regard to the provisions of section 107 of the Transfer of Property Act, which lay down that a lease from year to year or for a term of more than one year can be made only by a registered instrument, the mere acceptance of rent by the real owner under a lease granted by a trespasser cannot bind the real owner. It does not, however, appear that the lease in this case was one granted for agricultural purposes (see sec. 117 of the Transfer of Property Act). A landlord purchasing a non-transferable occupancy holding, in execution of a money-decree, after the holding had been mortgaged to a third party, can resist the claim of the mortgagee on the ground that the holding is not transferable (*Asmatunnissa Khatun v. Harendralal Biswas*, 35 Calc., 904 : 12 C. W. N., 721 : 8 C. L. J., 29).

Sub-letting—The provisions as to sub-letting will be found in sec. 85. Under the section, any raiyat may sub-let his holding subject to certain restrictions, and under clause (e), sub-section (3), section 178 of this Act nothing contained in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of an occu-

pancy raiyat to sub-let his land subject to, and in accordance with, the provisions of this Act.

Enhancement of rent.

Enhancement of rent.
Presumption as to
fair and equitable
rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Extended to Orissa, (Not., June 27th, 1892).

The provisions to this section are supplementary to those of sec. 24, which prescribe that an occupancy raiyat shall pay rent for his holding at fair and equitable rates. The two sections are founded on the provisions of section 5 of Act X of 1859 and of Act VIII, B. C., of 1869, according to which the rate previously paid by a raiyat was to be presumed fair and equitable until the contrary was shown in a suit by either party. (See *Ishar Ghosh v. Hills*, W. R., Sp. No., F. B., 148; *Hills v. Jendar Mandal* 1 W. R., 3; *Thakurani Dasi v. Bisheshar Mukhurji*, 3 W. R., Act X, 29; B. L. R., F. B., 202).

Restriction on en-
hancement of money-
rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Extended to Orissa, (Not., June, 27th, 1892).

Enhancement.—Enhancement of rent must mean an enhancement of the same kind of rent. A conversion of *nakdi* into *bhaoli*, cannot be regarded as an enhancement (*Hussan Kuli Khan v. Nakchhedi Nonia*, 33 Calc., 200; *Gauri Saran Mahto v. Mahamed Latif Hussain*, 4 C. L. J., 82 n).

Produce rents.—Produce rents apparently cannot be enhanced under the provisions of this sub-chapter. The only section of this sub-chapter that applies to rents payable in kind would seem to be section 27. A landlord can, however, always apply under sec. 40 to commute a rent payable in kind into a money rent, and then the provisions of this sub-chapter will be applicable. Under the old law, this could also be done, and in a case brought for this purpose it was held that the fact of the raiyat having paid in kind for a number of years was no bar to enhancement (*Thakur Prasad v. Mahomed Bakir*, 8 W. R., 170; *Mahomed Yakub Hossein v. Wahid Ali*, 4 W. R., Act X, 23).

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

Enhancement of rent
by contract.

- (a) the contract must be in writing and registered ;
- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat ;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract⁽¹⁾ :

Provided as follows—

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and,

(1) Compare s. 9. No such restriction is placed on the enhancement of owner-holder's rents by contract.

except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

- (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Extended to Orissa, (Not., June 27th, 1892.)

This section applies only to an increase in the rate of rent, and not to an increase in the amount of rent by reason of an increase of the area (*Satish Chandra Giri v. Kabiruddin Mallik*, 26 Calc. 233 ; *Nilmadhab Saha v. Kadam Mandal*, 3 C. L. J., 74 n). On the expiry of the term of a prior settlement the plaintiff took a fresh settlement from the Government of certain lands and contracted with the Government that he would not collect higher rents than were recorded in the settlement papers :—*held*, that that contract would not prevent him from recovering from the defendants higher rents by enforcing a contract which the latter had entered into with him. Section 9 of Reg. VII of 1822 did not render such an agreement illegal (*Gaur Chandra Saha v. Mani Mohan Sen*, 32 Calc., 463). When additional rent is claimed on the ground that the defendant has converted arable land into pasture land, and that both by contract and custom arable land is liable to pay more rent than pasture land, the suit is not one for enhanced rent under sec. 29 (*Rameswar Singh v. Kanchan Sahu*, 1 C. L. J., 78 n).

Clause (a).— A widow may sign a *kabulyat* on behalf of her minor son agreeing to pay enhanced rent, and the son on attaining full age and entering on possession of the tenancy is bound by the *kabulyat* (*Watson & Co. v. Sham Lall Mitra*, 15 Calc., 8). The words “both parties to give effect to the terms of the *solehnamah*” do not amount to incorporating the *solehnamah* in the decree and, therefore, the decree does not make any matter mentioned in the *solehnamah res judicata* or

judicial evidence, when it has not been registered (*Atilram Saha v. Nidan Mandal*, 10 C. W. N., liv).

Clause (b).—A contract which contravenes the provisions of this clause is wholly void. It is not divisible, so that a decree for enhanced rent up to the extent allowed by law cannot be given (*Krishna Dhan Ghosh v. Brojo Gobindu Rai*, 24 Calc., 895 : 1 C. W. N., 442 ; *Probat Chandra Gangopadhyaya v. Chirag Ali*, 33 Calc., 607 ; *Manindra Chandra Nandy v. Upendra Chandra Hazra*, 9 C. L. J., 343). But an agreement embodied in a *kabulyat*, to pay a certain amount of rent and which had been entered into by the raiyat not as an agreement for the enhancement of rent, but as a settlement of a dispute as to the nature and character of the existing rent so as to avoid further litigation, is not an agreement to enhance within the meaning of this clause (*Sheo Sahai Pandey v. Ram Rachia Rai*, 18 Calc. 333 : *Nath Singh v. Damri Singh*, 28 Calc. 90. See also *Madhu Manjhi v. Nil Mami Singh*, 18 W. R., 533). But under s. 109 B (2) and s. 147 A (3), added to the Act by Act I, B. C., of 1907, where any agreement or compromise made for the purpose of settling a dispute as to the rent payable is filed before a Revenue officer or in Court, the Revenue officer or the Court is required, in order to ascertain whether the effect of such agreement or compromise is to enhance the rent in a manner, or to an extent, not allowed by s. 29 in the case of a contract, to record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose. And under s. 109 B (1) and s. 147 A (2) the Revenue officer or Court is not allowed to give effect to any agreement or compromise, the terms of which, if they were embodied in a contract, could not be enforced under this Act. Apparently, therefore, the rulings as to the effect of agreements entered into with the object of settling disputes as to the rent payable have been set aside where Act I, B. C., of 1907 is in force. The provisions of clause (b) are not retrospective and do not apply to a *kabulyat* executed before the passing of this Act (*Tejendra Narain Singh v. Bakai Singh*, 22 Calc., 658). It was further held in the last cited case by Prinsep and Ghosh, J. J., (Rampini, J., dissenting), that a stipulation in a *kabulyat* executed in 1881 that on the expiry of seven years a fresh lease would be executed, and that if the raiyat cultivated the lands without executing a fresh lease, he would pay rent at the rate of Rs. 4 per bigha (a rate much higher than that fixed for the term of seven years) was in the nature of a penalty and could not be enforced. By an oral agreement in the year 1885, a tenant agreed to pay an enhancement of rent, and he paid rent at that rate until subsequently in the year 1893 he executed a registered *kabulyat* by which he agreed to pay a further enhancement of rent, which was more

than two annas in the rupee. The landlord then sued on the *kabulyat* for the rent agreed to therein, and it was held (1) that, inasmuch as the enhancement of rent referred to in s. 29 of the Bengal Tenancy Act refers to enhancement after the promulgation of the Act, if in this case the enhancement which was made in the year 1885 was before the Act came into force, it would not bar an enhancement during the period of fifteen years from the date thereof, as contemplated by cl. (3) of s. 29. But if the said enhancement was made after the Act came into force, it would also not bar a subsequent enhancement within fifteen years from the date thereof, as the previous contract was only an oral one, and was not effectual and binding upon the defendant : (2) that having regard to cl. (b) of s. 29, as the enhancement was more than two annas in the rupee, the registered *kabulyat* was bad in law, if the rent then agreed to be paid was an enhanced rent. The *kabulyat* was also bad in law, if the rent agreed to be paid was partly enhanced and partly increased rent (*Mathura Mohun Lahiri v. Mati Sarkar*, 25 Calc., 781). So also, a *Kabulyat* consolidating three several *jamas* found on measurement to contain more lands than what was mentioned in the original *kabulyat* (*Ajuh unnessa Bibi v. Hakim Biswas*, 13 C. W. N., cciii). When a lease is in the nature of a usufructuary mortgage, no right of occupancy can accrue by holding under such a lease. Hence, cl. (b) of sec. 29 does not bar a claim to increased rent (*Mohan Lal Dohy v. Radhey Koer*, 7 C. W. N., ccxv).

A *kabulyat* executed by an occupancy raiyat at an enhanced rate of more than two annas in the rupee, although executed in consideration of the avoidance of stringent conditions in a previous lease, is void (*Probat Chandra Gangapadhy v. Chirag Ali*, 33 Calc., 607 : 11 C. W. N., 62 : 4 C. L. J., 320).

Onus.—The onus of proving that a *kabulyat* contravenes the provisions of sec. 29 (b) is upon the tenant (*Luchmi Pershad v. Ekdeswar Singh*, 13 C. W. N., 181). But when it is shown what the tenant defendant's previous rent was, the onus lies upon the plaintiff land-lord to justify enhancement claimed in contravention of the provisions of clause (b) of this section (*Manindra Chandra Nandy v. Upendra Chanara Harza*, 9 C. L. J., 343).

Proviso (1). Effect of payment of rent for three years.—In the case of *Mathura Mohun Lahiri v. Mati Sarkar* (25 Calc., 781), cited above, it was further held that having regard to the proviso (1) of s. 29 and the provisions of s. 27, the plaintiff would at any rate, (*i. e.* failing the *kabulyat*) be entitled to recover rent at the rate paid by the defendant for more than three years. When a raiyat agreed on behalf of himself and his co-sharers to pay enhanced rent, and the enhanced

rent was paid for four years, it was held that it might be assumed that the co-sharers acquiesced in the arrangement, and the holding would be liable for the rent, and the co-shares would be answerable to the raiyat who had made the arrangement to pay the enhanced rent for any payment made under it (*Barhanudin Howladar v. Mohun Chandra Guha*, 8 C. L. R., 511). But it was subsequently decided by a Full Bench in *Bepin Behary v. Kristodhone*, (9 C. W. N., 265 : 1 C. L. J., 10 : 32 Calc., 395) that proviso (1) to s. 29 does not control clause (b) of that section. The landlord of an occupancy raiyat cannot therefore recover rent at the rate at which it has been paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed, if such rate exceeds by more than two annas in the rupee the rent previously paid by the raiyat. The case of *Muthura Mohun Lahiri v. Mati Sirkar*, so far as it decided to the contrary was wrongly decided. The rate contemplated by proviso (1) is not the average rate (*Bepin Behari Mandal v. Krishna Ghosh*, 32 Calc., 395 : 9 C. W. N., 295 : 1 C. L. J., 10 ; *Asraf Paramanik v. Sarada Prasud Rai*, 10 C. W. N., civ). The rule would appear to be that save on the ground of a landlord's improvement or release from the obligation to grow a special crop, the money rent of an occupancy raiyat cannot be enhanced by contract between the raiyat and his landlord by more than two annas in the rupee, or oftener than once in fifteen years. Higher or more frequent enhancement can only be obtained by suit. See also *Ram Tarun Chatterji v. Asmatullah*, (5 C. W. N., ccxxiv). Where tenants after mortgaging their land agree to pay, and for two or three years pay, an increased rent to their landlord who is ignorant of the mortgage, and the property is afterwards sold in execution of the mortgage debt, the *zamindar* is entitled to recover the increased rent from the tenants or from the party who has succeeded to their rights and interests (*Mitrajit Singh v. Raj Chandra Rui*, 15 W. R., 448).

Proviso (ii). To justify enhancement in contravention of cl. (b) of sec. 29, evidence as regards the improvement effected by the landlord and of the fact that enhancement was agreed to be paid in consideration of such improvement is admissible (*Probat Chandra Gangapadhy v. Chirag Ali*, 33 Calc., 607 : 9 C. W. N., 62 : 4 C. L. J., 320.)

Proviso (iii). An agreement to pay an enhanced rent in case the tenant raises a particular crop is not protected by proviso (iii) to sec. 29 (*Probat Chandra Gangapadhy v. Chirag Ali*, 33 Calc., 607 : 9 C. W. N., 62 : 4 C. L. J., 320.) When *kabulyats* are executed for increased rents on account of increase in the areas of the holdings, but not for enhanced rates, sec. 29 has no application (*Nil Madhub Saha v. Kadum Mandal*, 3 C. L. J., 74 n.)

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, (namely) :—

Enhancement
of rent by suit.

- (a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village [or in neighbouring villages,] and that there is no sufficient reason for his holding at so low a rate ;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ;
- (c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent ;
- (d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation. —“ Fluvial action” includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Extended to Orissa, (Not., June 27th, 1892).

The words in brackets in clause (a) were inserted by the Bengal Tenancy (Amendment) Act, III, B. C., of 1898 which was extended to Orissa by Not., Nov. 5, 1898. A suit for enhancement of rent under this section may be referred to arbitration (*Ganga Charan Rai v. Sasti Mandul*, 6 C. W. N., 614) : and a claim for increase of rent under sec.

52 may be properly joined in the same suit (*Sarada Charan Chatterjee v. Iswar Samli*, 11 C. W. N., 1154).

Clause (a). Prevailing rate.—A definition of the expression “prevailing rate” is now to be found in section 31 A, sub-section (1), introduced into the Tenancy Act by the amending Act of 1898, where it is provided that “in any district or part of a district to which this sub-section is extended by the Local Government by notification in the *Calcutta Gazette*, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a) by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which and at rates higher than which the larger portion of those lands is held may be taken to be the prevailing rate.” On the subject of the amendments made in this section and in sec. 31 of this Act by the amending Act of 1898, it was said in the Statement of Objects and Reasons of the Bill to amend the Act :—

“The third object of this Bill is to amend the substantive provisions of the law relating to the enhancement of rent, so as to make them workable on certain points on which they are now practically inoperative. In suits and proceedings for enhancement of rent on the ground of prevailing rate, the Civil Courts and Revenue Officers are bound to confine their enquiries and comparisons of rates to the same village, and the definition of what is a prevailing rate is so vaguely worded that in practice it is found almost impossible to enhance rents on this ground. A revenue survey village in Bengal may contain 100 acres, or several thousand acres, or may consist of scattered blocks. It does not necessarily furnish a proper standard of comparison. As regards the meaning of the term “prevailing rate,” there is only one decision of the High Court bearing on the subject, and that declares that a prevailing rate is *not* an average rate, but does not explain what it is. The view taken by the Special Judges generally has been that a prevailing rate is a uniform rate paid by a majority of the raiyats for lands of the same class in the village. This was the interpretation generally put on the term “prevailing rate” under Act X of 1859. The effect of the wording of section 30 of the Act, as it stands, is to give a ground of enhancement which cannot be worked. It is proposed to somewhat enlarge the area for comparison, while an attempt is made to define what is meant by “prevailing rate.” Whatever objections there may be to this ground of enhancement generally, it is universally admitted that when land is held at a pepper-corn rent by reason of fraud or collusion between the proprietor's *anda* and the raiyats, there is no other ground on which the *zamindar* can obtain an enhancement up to a reasonable rate except that of the “prevailing rate,” and in such case it is just that this ground of enhancement should be made a workable one. The intention of the amendments proposed in

sections 30 and 31 of the Act, and of the new sections 31 A and 31 B is to effect this object, without at the same time endangering the interests of the tenants by making an average rate a prevailing rate, thus rendering it possible to level all the lower rates up to such average rate, while maintaining all the higher rates, however much in excess they may be of the average rate. As, under the definition now proposed, a prevailing rate will always be found where rates exist at all, and the effect of the new definition will be to greatly facilitate the enhancement of rents, and as rents are known to be already too high in certain districts, power is taken by Government to withhold the operation of the new definition from any district or part of a district. In order to guard against all the rates being levelled up to the maximum rate, by manipulation of new prevailing rates from time to time, it is provided in section 31 B that a prevailing rate once determined shall not be liable to enhancement except on the ground of rise in prices."

The case referred to in the above extract is apparently the case of *Shital Mandal v. Prasanna Mayi Debi*, (21 Calc., 986), in which it is said that the words "prevailing rate" in clause (a), section 30, appear to be used in the sense in which they are used in the earlier cases under Act X of 1859, and mean "the rate actually paid and current in the village, and not the average rate."

As the definition of "prevailing rate" given in section 31 A (1) will only apply in those districts to which the local Government may extend the provisions of that sub-section, the rulings in *Shital Mandal v. Prasanna Mayi Debi* and other cases on this subject will be of importance in suits arising in districts to which they may not have been extended. In another case under clause (a), section 30, where it was found that there was no one prevailing rate, and that the raiyats holding lands in the village of similar description and with similar advantages paid rent at varying rates, it was held that the lowest rate might be taken and the rent of the defendants might be enhanced up to that rate (*Alif Khan v. Raghunath Tewari*, 1 C. W. N., 310). When there were different kinds of land, and the majority of tenants holding lands similar to those of the defendant paid a higher rate, this higher rate was held to be the prevailing rate (*Mangni Rai v. Seo Charan Munder*, 1 C. W. N., clxxix). In one case, decided under the former law, *Dina Ghazi v. Mohini Mohan Das*, (21 W. R., 157), it was held that, if a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the average of the different rates current in the village may be taken and treated as the prevailing rate. But this case stands by itself. In *Samira Khatun v. Gopal Lal Tagor*, (1 W. R., 58), *Roshan Bibi v. Chandra Mudhab Kar*, (16 W. R., 177) and *Audhi Bihari Singh v. Dost Mahomed*, (22 W. R., 185), it was expressly said that the adoption of an

average rate from different rates was not the correct mode of fixing the proper rate, and in *Sadhu Singh v. Ramanugraha Lal*, (9 W. R., 83), the words "prevailing rate" were held to mean the rate generally prevalent, or the rate paid by the majority of the raiyats in the village. In *Dhunraj Kunwar v. Uggar Narain Kunwar*, (15 W. R., 2), they were said to mean the rate paid by so large a majority of the same class of tenants for similar lands as would justify one to hold the rate to be the prevailing rate. Then, it was observed that a decision must be arrived at as to what is the prevailing rate, and a decree should not be given for "a fair rate" (*Pelaram Kotal v. Nund Kumar Chatteram*, 6 W. R., Act X, 45). That rate need not be the prevailing rate; it may be a lower rate (*Akul Ghazi v. Aminuddin*, 5 C. L. R., 41). *Patwarian* and *abwabs* must not be taken into consideration in finding what is the prevailing rate (*Barmah Chaudhri v. Srinand Singh*, 12 W. R., 29). The fact of a particular rate of rent having been decreed against two raiyats not having rights of occupancy is not enough to show that the rate so decreed is the rate prevailing in the neighbourhood (*Sarahatunnissa v. Gyani Baktaur*, 11 W. R., 142). Nor can the rate claimed be held to be established as the prevailing rate on the probability, or even the certainty, that if the rents of the neighbouring occupants were re-adjusted, they would come up to the rate claimed (*Brindaban De v. Bisnu Bidi*, 13 W. R., 107). But the evidence of three *patwaris* who put in their *jamabandis*, showing the rates paid by almost all the raiyats, i. e., the majority, was held sufficiently to prove the prevailing rate (*Priug Lal v. Brockman*, 13 W. R., 346).

Clause (a). Lands of a similar description.—In one case, *Tikaram Singh v. Sandes*, (22 W. R., 335), in which, although the plaintiff had not given evidence as to the rate of rent payable by tenants of the same class holding lands of precisely similar quality and adjacent to those occupied by the defendant, yet he had given evidence as to such lands so occupied of a somewhat better quality than those occupied by the defendant, and the rate of rent allowed was such as, regard being had to the slight difference in the quality of the lands, was proper to award in conformity with the spirit of the rent law, it was held that this decision was reasonable and was accordingly affirmed. The principles enunciated in this case, however, hardly seem to be good law.

Clause (a). Sufficient reason for holding at low rate.—Sufficient reasons for raiyats holding at exceptionally low rates would seem to be that they hold the land on reclaiming or *jungalburis* leases, or have reclaimed the land (see *Nur Mahomed v. Hari Prasanno Rai*, W. R., Sp. No., 1864, Act X, 75; *Chaudhri Khan v. Gaur Jana*, 2 W. R., Act X, 40; *Parmanand Sen v. Paddamani Dasiya*, 9 W. R., 349; *Surasundari*

Debi v. Gulam Ali, 19 W. R., 141^r; *Haro Prasad Rai v. Janmajai Bairagi*, 9 Calc., 505 : 12 C. L. R., 251), or that they belong to classes of raiyats holding land at favourable rates of rent in accordance with local custom [see sec. 31, clause (c)].

Clause (b). Rise in prices.—Under the old law, (sec. 17, clause (2), of Act X of 1859 and sec. 18, para. (3), of Act VIII. B. C., of 1869) a raiyat's rent could be enhanced on the ground of a rise in "the value of produce." This was difficult to prove : see *Haro Prasad Rai v. Umataru Debi*, (7 Calc., 263). It will in future be easy, in consequence of the provisions of sec. 39, which prescribe the preparation of lists of the market prices of staple food-crops, to establish a right to enhancement on the ground of a rise in prices, which must be a rise in the prices of food-crops, and will not depend on the value of the particular crop grown by the raiyat, which, if for export, may fluctuate with the fluctuations of foreign markets.

Clauses (c) and (d). Increase in productive powers of land.—The old law allowed of an enhancement of rent on the ground of an increase in "the productive powers of land, otherwise than by the agency and expense of the raiyat." This ground of enhancement has now been subdivided into two, *viz.*, landlords improvements and fluvial action, which alone, in the opinion of the framers of the Act, "can bring about an increase in the productive powers of the land so as to justify an enhancement of rent." "All other cases," it was said by Sir Steuart Bayley, "seem to resolve themselves into cases, such as railways or canals, in which the landlord will get his enhancement by improvement of prices, or else into improvements effected by Government or by the raiyat" (Selections from papers relating to the Bengal Tenancy Act, 1886, p. 415).

Increase of area.—Under the old law the raiyat's rent could also be enhanced on the ground of an increase in area of the land held by him. This is, properly speaking, not a ground of enhancement, and is therefore dealt with separately in section 52.

No notices of enhancement required.—As already pointed out in the note to s. 6, p. 58, notices of enhancement are wholly unnecessary.

By whom suit for enhancement may be brought.—Having regard to the provisions of sec. 188 of this Act, a suit for enhancement of rent on the grounds specified in this section must be brought by all the landlords, and cannot proceed at the instance of some only of the fractional co-sharers (*Gopal Chandra Das v. Umesh Narain Chaudhri*, 17 Calc., 695 ; *Baidya Nath De Sarkar v. Him*, 2 C. W. N. 44 : 25 Calc., 917). See note to sec. 188. Sec. 30 of the Act does not

apply to the enhancement of the rent of an undivided share of a holding (*Horibol Brahma v. Tasimudin Mandal*, 2 C. W. N., 680). A suit for enhancement may be brought by a farmer (*Durga Charan Chaturji v. Golak Chandra Biswas*, 23 W. R., 228); by an ijaradar when there is no stipulation in his lease precluding him from so doing (*Durga Prasad Mahanti v. Jainarain Hazrah*, 2 Calc., 474); and by a Hindu widow, whether suing as widow of her deceased husband or as guardian of her minor son (*Surja Kanth Acharji v. Hemanta Kumari*, 20 Calc., 498; L. R., 25 I. A., 25).

Time from which enhancement takes effect.—Under the provisions of sec. 154, a decree for enhancement, if passed in a suit instituted in the first eight months of the agricultural year, ordinarily takes effect from the commencement of the next agricultural year; if passed in a suit instituted in the last four months of the agricultural year, it ordinarily takes effect on the commencement of the next year but one following: but a later date may for special reasons be fixed by the Court.

Arbitration.—In a suit for enhancement of rent under sec. 30 the case was referred to arbitration. *Held*, that the arbitrator had jurisdiction to settle a fair and equitable rent as the parties declared that they would be bound by what the arbitrator would decide (*Ganga Charan Rai v. Sasti Mandal*, 6 C. W. N., 614).

Court-fees.—Under sec. 6, sub-sec. 11 of Act VII of 1870, in a suit to enhance the rent of a raiyat having a right of occupancy, the amount of the fee payable shall be computed according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Rules as to
enhancement on
ground of pre-
vailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

- (a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during the period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

- XIV of 1882.
- (b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV (O.XXVI Act V of 1908) of the Code of Civil Procedure by such Revenue officer as the Local Government may authorise in that behalf by rules made under section 392 (O.XXVI r. 9. Act V of 1908) of the said code ;
- (c) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate ; and, whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom ;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorised on account of a landlord's improvement shall not be taken into consideration ;
- [(e) if a favourable rate has been determined under clause (c) for any description of raiyats, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate ;
- (f) if the holding is at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and

applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.]

Extended to Orissa, (Not., Jan. 27th, 1892).

Clauses (e) and (f) of this section have been added by the amending Act III, B. C., of 1898, which has been extended to Orissa, (Not., Nov. 5th, 1898).

Clause (b). Government Notification regarding rank of Commissioner.—In the *Calcutta Gazette* of 22nd July, 1890, Part I, p. 756, is published the following notification, with reference to the provisions of cl. (b) of this section :—

“In modification of the Government notification, dated 4th Nov., 1885, the Lieutenant-Governor has been pleased to make, under sec. 392 of Act XIV of 1882, the following revised rules as to the persons to whom commissions shall be issued under the Bengal Tenancy Act.

“Whenever, under secs. 31 (b) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local inquiry be held under Chap. XXV (O.XXVI Act V of 1908) of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of a Sub-Deputy Collector, as the Collector of the district may, from time to time, select for the purpose.”

“The Court shall issue a precept to the Collector requiring him forth-with to nominate a fit person as above to conduct the inquiry, and the commission shall be issued to the person nominated.”

Clause (b). Board of Revenue's instructions regarding local inquiries.—The Board of Revenue in its circular No. 4 for August 1894, points out that the person to whom the commission is issued

“is bound, under the Civil Procedure Code, to make the local inquiries himself. He may entertain a reasonable staff of chainmen and amins to enable him to perform the work properly.

“No cost should be incurred to meet the charges of the local inquiry beyond that actually allowed by the Court issuing the commission, under rule 30 (b) at page 41 of the High Court's General Rules and Circular Orders, as revised in 1891. If the probable costs were calculated with regard to the time likely to be occupied in the execution of the commission, and the commissioner finds that the time fixed is insufficient, he should give timely notice to the party at whose instance the commission was issued and report the fact to the Court. Then, unless the sum necessary to cover the expenses for such further period as may be required to complete the execution of the commission is deposited in Court by the party and the commissioner certified of such deposit, he should suspend the investigation at the close of the period originally fixed, pending the further instructions of the Court.

The expenses of the commission will generally fall under the following heads :

- (1) Remuneration of the commissioner.
- (2) His travelling and halting allowances.
- (3) Charges for the temporary subordinate establishment that may be employed.
- (4) Incidental charges that may be unavoidable.

The first will be calculated on the basis of the actual pay which the person to whom the commission is issued has been receiving. The second will be regulated by the scale prescribed for officers of Government of the class to which the commissioner belongs, unless the Court should, for exceptional reasons, order an allowance in excess of the above. The third and the fourth will be passed on the authority of the Revenue officers concerned, but must on no account assume proportions so as to exceed, in conjunction with the charges under heads (1) and (2), the sum actually allowed by the Court."

The Board of Revenue in its circular No. 7 of April, 1899, says :—

"The words 'from time to time', in the notification, above quoted" (i. e., the Government notification) "give the Collector the option of changing his nomination, if in case of sickness, transfer, urgent press of work, or other valid reason, his original nominee cannot make the enquiry."

Clause (c).—The provisions of this clause are founded on, and are almost identical with, those of section 20 of the North-Western Provinces Rent Act (XII of 1881). The custom in question must be a local, and not a family custom. (Reynolds's N. W. Provinces Rent Act, p. 34).

[31A.] (1) In any district or part of a district to which this sub-section is extended by the Local Government by notification in the Calcutta Gazette, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which and at rates higher than which the larger portion of those lands is held may be taken to be the prevailing rate.

What may be taken in certain districts to be the "prevailing rate."

Illustrations.

- (a) The rates at which land of a similar description and with similar advantages is held in a village are as follow :—

Bighas.							Rs.	A.	P.
100	...	...	...	...	...	at	1	0	0
200	...	...	...	...	...	„	1	8	0
150	...	...	...	...	...	„	1	12	0
100	...	...	...	...	...	„	2	0	0
150	...	...	...	...	...	„	2	4	0
Total...700									

Then, Rs. 2-4 is not the prevailing rate, because only 150 bighas, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 bighas, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 bighas, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

- (b) The rates at which land of a similar description and with similar advantages is held in a village are as follow :—

Bighas.							Rs.	A.	P.
100	...	...	...	...	...	at	1	0	0
250	...	...	...	...	...	„	1	4	0
150	...	...	...	...	...	„	1	8	0
150	...	...	...	...	...	„	1	12	0
50	...	...	...	...	...	„	2	0	0
Total ... 700									

Then, for the reasons given in illustration (a), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 bighas (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates, and this is the highest rate at which, or at rates higher than which, more than half the land is held.

(2) The Local Government may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.]

Extended to Orissa (Not., Nov. 5th, 1898) and to the district of Tipperah (Not., No. 1470, T. R., dated September 1st, 1900)

Section 31 A.—This is a new section introduced into the Act by the amending Act III, B. C., of 1898. In it the Legislature for the first time abandons the principle laid down in the rulings of the High Court (see note, pp. 134, 135) to the effect that the prevailing rate is that paid by the majority of raiyats in the village and, prescribes that the highest of the rates at which and at rates higher than which the major portion of the lands of any area is held may be taken to be the prevailing rate. This is a new departure in two respects, *viz.*, (1) that the prevailing rate is now defined not with reference to the number of raiyats paying rent, but with reference to the quantity of land for which rent is payable; and (2) that it enables the highest of rates in the ascending scale of rates, at which and at rates higher than which the major portion of land of a similar description and with similar advantages in the same village or in neighbouring villages is held, to be taken as the prevailing rate; so that in time all lesser rates may be raised to this rate. The provisions of sub-section (1) will, however, only be applicable in those districts to which the Local Government may see fit to extend them. See note, pp. 133, 134.

[31B. When the prevailing rate has once been determined by a Revenue Officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b), and section 32.]

Limit to enhancement of prevailing rate.

Extended to Orissa (Not., Nov. 5th, 1898).

Section 31 B.—This section was also introduced into the Act by the amending Act of 1898.

In the statement of Objects and Reasons it was stated: "In order to guard against all the rates being levelled up to the maximum rate by manipulation of new prevailing rates from time to time, it is provided in section 31B that a prevailing rate once determined shall not be liable to enhancement except on the ground of rise in prices." The section applies only to the enhancement of a prevailing *rate*, when such a rate has once been determined. It would not apparently prevent the *rent* of a particular holding being enhanced on any of the other grounds specified in section 30 of the Act, *i.e.* "landlord's improvements" or "fluvial action." Where such grounds are applicable to a particular

holding, its rent can apparently be enhanced, even though the rent had been fixed with reference to a prevailing rate.

Rules as to
enhancement on
ground of rise
in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

- (a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;
- (b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison : provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period ;
- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a), the Court may, in its discretion, substitute any shorter periods therefor.

Extended to Orissa (Not., June 27th, 1892).

Clause (a).—Section 39 provides for the preparation of price-lists so as to enable the provisions of this clause to be given effect to.

Clause (b).—The rule of proportion embodied in this clause is that laid down by the Judges in the case of *Thakurani Dasi v. Bisheshar Mukhurji* (B. L. R., F. B., 202 : 3 W. R., Act X, 29). The deduction prescribed in the proviso is to allow for the increased cost of production. The Select Committee on the Bill on this point said :—"We recognised the difficulty of making the Courts ascertain the actual cost of produc-

tion, and, as it was necessary to fix an arbitrary limit, we have fixed the deduction at one-third as a general rule" (Selections from papers relating to the Bengal Tenancy Act, 1835, p. 334).

Rules as to enhancement on ground of landlord's improvement.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;
- (b) in determining the amount of enhancement the Court shall have regard to—
 - (i) the increase in the productive powers of land caused or likely to be caused by the improvement,
 - (ii) the cost of the improvement,
 - (iii) the cost of the cultivation required for utilizing the improvement, and
 - (iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Extended to Orissa (Not., June 27th., 1892).

The subject of "improvements" is dealt with in sections 76 to 83. The rent of an occupancy raiyat may, also under section 29, be enhanced by private contract made between the landlord and the raiyat on account of an improvement made by the landlord ; but the enhanced rent fixed by such contract is only payable subject to the restrictions laid down in proviso (ii) to section 29.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

- (a) the Court shall not take into account any increase which is merely temporary or casual ;
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Extended to Orissa (Not., June 27th, 1892).

The rule laid down in clause (a) follows the High Court rulings under the old law in *Krishna Mohan Patro v. Hari Sankar Mukhurji*, (7 W. R., 235) and *Abdul Ghani v. Bhattu*, (22 W. R., 350).

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Enhancement by suit to be fair and equitable.

Extended to Orissa (Not., June 27th, 1892).

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual ; that it is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

Power to order progressive enhancement.

Extended to Orissa (Not. June 27th, 1892).

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

Limitation of right to bring successive enhancement suits.

Failure in a previous suit for additional rent for additional lands, does not bar a similar suit within fifteen years, *Moharju Radhakisore Manikya v. Umedali*, (12 C. W. N., 904).

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure (O.XXIII. r. 1, of Act V of 1908).

XIV of 1882.

Extended to Orissa (Not, June 27th, 1892).

Sub-section (1).—The 2nd March, 1883, is the date on which leave to introduce the Bill to amend the rent law was obtained.

A decree obtained in a suit instituted to enforce a contract made before the 2nd March, 1883, in which the defendant agreed to pay a higher rent was held to be no bar under the provisions of this section to a suit for enhancement of rent under the provisions of the Tenancy Act (*R. Mitter v. Dwarka Nath Chakravartty*, decided by Prinsep and Banerjee, J.J., May 28th, 1891).

A suit for both enhancement and arrears at an enhanced rate is maintainable. The causes of action, though separate, may be combined under sec. 45. C. P. C., (*Gudar Tewari v. Brij Nandan Prasad*, 5 C. W. N., 880).

Waiver of enhanced rent decreed.—In 1267 the Plaintiff obtained a decree in a suit to enhance the defendant's rent. It was held

that the acceptance by the plaintiff of the old rent from 1268 to 1271 was no waiver of his claim to the higher rent decreed to him (*Lauder v. Binod Lal Ghosh*, 6 W. R., Act X, 37).

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely) : —

- (a) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or
- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Extended to Orissa (Not., June 27th, 1892).

A raiyat cannot by any contract made after the passing of this Act contract himself out of the provisions of this section [(sec. 178, sub-sec. (3), cl. (f))].

Reduction of rent.—An occupancy raiyat cannot sue for a reduction of rent except on one of the grounds specified in this section. He, therefore, cannot sue to have his rent abated on the ground that it is higher than the prevailing rate. But neither could he do so under the old law (*Baban Mandal v. Shib Kumari Barmani*, 21 W. R., 404). Nor could he have applied for abatement of rent on the ground of fraud, his remedy being to apply to have the contract set aside (*Sukur Ali v. Amla Ahalya*, 8 W. R., 504; *Darimba Dehya v. Nilmoni Singh Deo*. 5 C. L. R.,

465) ; and a landlord receiving remission from Government on account of damage done to his estate by a cyclone was not on that account bound to allow a remission to his under-tenants, unless he had received the former on the understanding or agreement that he would allow it in turn (*Golak Chandra Mahanti v. Parbati Charan Das*, 15 W. R., 167).

How reduction of rent can be claimed.—Under the old law a raiyat entitled to a reduction of rent had three courses open to him. He could either sue for abatement of rent or wait till sued by his landlord and then set up a claim to a set-off, or he might complain of an excessive demand of rent and sue for a refund (see Bell's Law of Landlord and Tenant, 2nd. edit., p. 57 ; and *Barry v. Abdul Ali*, W. R., Sp. No., 1864, Act X, 64 ; *Baikantho Paraki v. Surendro Nath Rai*, 1 W. R., 84 ; *Savi v. Abhai Nath Basu*, 2 W. R., Act X, 28 ; *Dindyal Lal v. Thakru Kunwar*, 6 W. R., Act X, 24 ; *Nil Mani Singh Deo v. Annoda Prasad Mukhurji*, 10 W. R., F. B., 41 ; 1 B. L. R., F. B., 97 ; *Mahtab Chand v. Chitro Kumari Debi*, 16 W. R., 201 ; *Gaur Kishor Chandra v. Bonomali Chaudhuri*, 22 W. R., 117). The present section only provides for a reduction of rent being obtained on the grounds specified in it in a suit instituted for the purpose. A tenant may also obtain a reduction of rent under section 52 (1) (b) on the ground of a deficiency proved to exist in the area of his tenure or holding, but whether this reduction must be sued for, or whether the deficiency of area may be pleaded by way of set-off, is not apparent. A raiyat from whom any sum has been exacted as rent may also sue under sec. 75 for a refund and for an additional sum as a penalty.

Permanent deterioration of soil of holding—In *Gauri Patra v. Reily*, (20 Calc., 579), it was said that the Judge of the Court below was wrong in his interpretation of the word "permanent" in this section. He seemed to think that a deterioration ought not to be held to be permanent, if by application of capital and skill the cause of the deterioration might be removed. But a more liberal interpretation must be put upon the word, and it must be construed with reference to existing conditions. Under the old law it was held that the grounds on which a raiyat could claim an abatement must have resulted from causes beyond his control (*Jansur Ali v. Harvey*, 11 W. R. 291), such as a deposit of sand on part of his land (*Inayatullah v. Hahi Baksh*, W. R., Sp., 1864, Act X, 42).

Produce-rents.—The provisions of sec. 38 apply only to rents payable in money. There is no provision of this Act under which raiyats paying rent in kind can claim or sue for a reduction of rent.

Price-lists.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing through-

out each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, [and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct], unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor-General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

The words in brackets were inserted in this section by the amending Act of 1898, which has been extended to Orissa (Not., Nov. 5th, 1898).

Price-lists.—Price-lists relating to current times have been prepared ever since the passing of the Tenancy Act under rules to be found in Chap. II of the Govt. rules under the Tenancy Act (see Appendix I). By Govt. notification No. 4307 L. R., dated Nov. 7th, 1896, published in the *Calcutta Gazette* of Nov. 11, 1896, Part I, p. 1150, price lists for periods anterior to the passing of the Tenancy Act in certain specified marts in the Orissa division have been ordered to be prepared (see Schedule II appended to the Govt. rules, Appendix I).

Sub-section (6).—This sub-section, as originally passed, provided that only price-lists “prepared for any year subsequent to the passing of the Act” should be presumed to be correct. The Bill to amend the Act, which afterwards became the Bengal Tenancy (Amendment) Act, 1898, proposed to omit these words.

On the motion of the Hon'ble Babu Surendro Nath Banerjee in Council, the words now inserted in the section were added to it, and the words it was proposed to omit were allowed to remain. The effect of

this amendment is that price-lists for periods subsequent to the passing of the Act shall, and those for periods prior to the passing of the Act may, be presumed to be correct, until it is proved that they are incorrect.

Rules regarding the preparation of price-lists.—For these rules, see Chap. II, of the Government Rules under the Act, Appendix I.

Commutation.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, [or partly in any of those ways and partly in cash,] either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-divisional Officer, or to [a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights] under Chapter X, 'or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as a money rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

- (a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity ;

- (b) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available ;
- (c) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges ; and
- [(d) improvements effected by the landlord or by the occupancy-raiyat in respect of the raiyat's holding, and to the rules laid down in section 33 regarding enhancement of rent on the ground of a landlord's improvement.]

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

Under sec. 178, sub-section (3), cl. (g), nothing in any contract made after the passing of the Act can take away the right of either landlord or tenant to apply for a commutation of rent under this section. But it has been ruled that a landlord may demand payment of rent in kind in accordance with the original contract, although the tenant has paid rent in money for some years (*Sahabul Ali v. Abdul Ali*, 3 C. W. N., 151.)

Rents payable in kind.—“The system of rent payment in kind prevails extensively only in the districts of Gaya, Shahabad and Patna, where the character of the country renders necessary the maintenance of an

elaborate village system of irrigation ; but in most, if not all, other districts of the province lands are also found, the produce of which is divided between the cultivator and the landlord, and the marked absence of applications for commutation would seem to indicate that this section of the law is little known. It may, however, be also largely due to local custom recognizing in such cases no right to the land in the cultivator, but merely to a share of the produce raised by him. In Bihar the holding of land on a produce rent, known as the *bhaoli* ⁽¹⁾ system is a regular form of tenancy, very common in the three districts named above lying south of the Ganges.....The practical difficulties in the way of maintenance of the system of irrigation by the *raiya* themselves, which would necessitate combination among the residents of each village or of several villages, where a water channel serves more than one village, have undoubtedly established among the tenants a preference for the *bhaoli* system. Under it the rental varies with the outturn of the crops, and the tenants are, at least, secured half their produce ; while the landlord on whom the duty of maintaining the irrigation work devolves, is under a strong inducement in his own interests to keep them in fair order." (Secy. to the Board of Revenue's report on the working of the Tenancy Act, No. 419A, dated 30th April, 1892, para. 21).

Board of Revenue's instructions under this section.—

The Board of Revenue in their circular No. 5, dated June, 1892, have issued the following instructions for the guidance of officers to whom applications for commutation are made.

"The Board have reason to believe that misconception exists among some officers as to the requirements of the law under section 49 of the Bengal Tenancy Act, and that this has led to the rejection of applications for commutation of rents payable in kind on insufficient grounds, and the consequent discouragement of such applications. They desire, therefore to point out that, subject to the grounds of his decision being recorded and to an appeal, the officer dealing with an application under the section has full discretion to seek for such evidence, and make such inquiry, as he may deem necessary in order to determine the money-rent to be fixed. If the tenants are unable to produce receipts showing the quantity of produce previously received by the landlord or its cash-equivalent—and they will seldom possess such receipts—or the landlords file papers purporting to give previous outturns and divisions of the crops which the tenants repudiate, or which are apparently false, the applications should not necessarily be rejected, but the officer should endeavour to arrive at a fair estimate of the money-rent by recording and duly considering such oral testimony as may be produced by the parties, by reference to other sources of information, such as the cess papers of the estate, and, if necessary, by local inquiry conducted in person or through some other competent officer. See Board's Settlement Manual of 1908 Part II, Chap. XI, r. 526 p. 137.

(1) Probably a contraction of *bhao*, rate and *wali*, relating to.

Sub-section (5).—The provisions of this sub-section are imperative. The object of requiring the time from which the order is to take effect to be stated is to enable the parties to know from what date the new arrangement is to come into operation. It ought not to be left in uncertainty and in the absence of any date being fixed in the order, the order must be taken to be practically inoperative, or at any rate, to remain in suspense, until it is amended by the specification of the term of its operation (*Raghunath Saran Singh v. Dhoda Rai*, 18 Calc., 467).

An appeal from an order of a Collector under this section to the Commissioner must be preferred within 30 days (Sch. III, art. 5). An order passed in appeal by a Revenue Court under sec. 40 is final (*Saligram Singh v. Ramgir*, 3 C. W. N., 311).

Sub-section (6).—When the application for commutation is opposed, the application may be granted or refused, according as the officer disposing of it may think proper. The section does not provide for the case, which is of common occurrence, in which the application is opposed on the ground that the rent is not payable in kind but in money.

No suit will lie in Civil Court to call in question propriety of an order under this section.—A tenant made an application to the Collector under sec. 40 of this Act for a declaration that he was the defendant's raiyat in respect of a parcel of *guzastha kasht* land and for commutation of the rent which had hitherto been payable in kind. The Collector granted the application; but the order was reversed on appeal by the Commissioner. The tenant then sued under section 42 of the Specific Relief Act for substantially the same relief as he had asked before the Collector. It was held (1) that an order passed in appeal under sec. 40 is final, and no suit lies in the Civil Court by which its propriety can be questioned; and (2) that before the passing of the Tenancy Act no suit could lie in the Civil Court for commutation of the rent, and, therefore, the special procedure laid down in sec. 40 for enforcing the new right created therein is the only procedure which can be followed (*Saligram Singh v. Ramgir*, 3 C. W. N., 311).

Changes made by Act I, B.C., of 1907.—The alteration in sub-section (2) made by s. 11, Act I. B. C., 1907, was, it was said in the Select Committee's report, for the purpose for ensuring that the power to commute rents should be entrusted only to an officer of some standing. The Select Committee explain the reason for the addition of clause (d) as follows:

"At present section 40 contains no provision requiring an officer commuting produce rents to have regard to improvements made by the landlord or tenant in respect of the holding under commutation. We consider this a de-

fect, as the existence of such improvements is often an important factor in determining the amount of the cash rent to be fixed on commutation. We propose, therefore, to add a provision to sub-section (4) of section 40 allowing this to be done."

[40A.] (1) Where the rent of a holding has been commuted under section 40, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

Period for which
commuted rents
are to remain
unaltered.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (5) of section 40.]

This section has been added to the Act in Bengal by sec. 12 Act I, B. C., of 1907. In explanation of the introduction of this section the Select Committee on the Bill observe that the absence of such a provision as this would seem to be a defect in the present law.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

Application of Chapter.

Extended to Orissa, (Not., Sept. 10th, 1891).

Non-occupancy rights.—Nothing in this Chapter applies to proprietors' private lands sec. 116), or to land held under the custom of *utbandi* [sec. 180 (2)]. Non-occupancy rights can be acquired in agricultural land, even though the person letting the tenant into the land has no valid title and is therefore a trespasser (*Mohin Chandra Saha v. Hazari Paramanik*, 17 Calc., 45; *Binod Lal Prakash v. Kalu Paramanik*, 20 Calc., 708), provided the tenant has acted in good faith (*Piari Mohan Mandal v. Radhika Mohan Hazra*, 8 C. W. N., 315; *Upendra Chandra Bhattacharya v. Pratab Chandra Pradhan*, 3 C. W. N., 320). See notes to sec. 3 (3), p. 25; and sec. 5, p. 56. But this is not the case when the Transfer of Property Act is applicable (*Sheo Charan Lal v. Prabhu Dayal*, 1 C. W. N., 142). A non-occupancy raiyat can sub-let his land (sec. 85), and by no contract made after the passing of the Act can he bind himself not to do so sec. 187 (3) (e)]. Non-occupancy rights may be transferable by custom (sec. 183), and may, in accordance with local usage, be bequeathed [sec. 178 (3) (d)], and nothing in a contract made after the passing of the Act can take away a raiyat's right to transfer or bequeath his holding in accordance with local usage [sec. 178 (3) (d)]. But non-occupancy rights are not heritable (*Karim v. Sundar Bewa*, 24 Calc., 207; 1 C. W. N., 89): at least they are not heritable under the Bengal Tenancy Act, whatever may be the case independently of the Act (*Lakhan Narain Das v. Jainath Pandey*, 34 Calc., 516; 11 C. W. N., 626; 5 C. L. J., 457). See also *Uday Chandra Das v. Hari Das*, 13 C. W. N., 937. Section 26 expressly makes the right of an occupancy-raiyat heritable, and therefore by necessary implication the right of a non-occupancy raiyat is not heritable (*Lakhan Narain Das v. Jainath Pandey*, 5 C. L. J., 457; 11 C. W. N., 626). Non-occupancy raiyat cannot apply for reduction of his rent, except on the ground of diminution of area [sec. 52 (b)]. But in *Gauri Patra v. Reily*

(20 Calc., 579), it had been said that, "though it is only an occupancy-raiyat, who is authorized by the Act to bring a suit under sec. 38, yet the principles laid down in that section ought to be taken into consideration in all proceedings for the settlement of rent, whatever be the status of the raiyats." A non-occupancy-raiyat can construct a well and erect a suitable dwelling-house for himself and his family on his land, without his landlord's permission, and he can make any other improvement, as defined in sec. 76, if his landlord, after being requested in writing to make the improvement, neglects to make it (sec. 79).⁽¹⁾

Accretion.—A non-occupancy-raiyat can acquire a right to a newly formed land as an accretion to his holding under clause (1) of sec. 4 of Reg. XI of 1825, (*Amjad Ali v. Kaderjan Bibi*, 13 C. W. N., 269 : 8 C. L. J., 537 ; *Ahmad Bepari v. Toki Mahomed*, 13 C. W. N., 267 : 8 C. L. J., 538 ; *Miajan v. Akram Ali*, 8 C. L. J., 541).

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Initial rent of non-occupancy-raiyat.

Extended to Orissa, (Not., Sept. 10th, 1891).

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46 :

Conditions of enhancement of rent.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Extended to Orissa, (Not., Sept. 10th, 1891).

Enhancement—There are no restrictions on the enhancement of a non-occupancy-raiyat's rent by registered agreement, as there are in the case of an occupancy-raiyat's rent (sec. 29). But a non-occupancy-raiyat cannot be compelled to execute an agreement under sec. 46, unless the Court considers the rate of rent demanded by the landlord to be fair and equitable [sec. 46 (6)]. An occupancy-raiyat's rent once

(1) Cf. sec. 108 (p), Act IV of 1852, which however has not been extended under s. 117 to agricultural leases.

enhanced cannot be enhanced by contract again for fifteen years [sec. (29) (c)]. There is no such limitation on the enhancement of a non-occupancy-raiyat's rent, but if he agrees to pay the rent stipulated for in an agreement tendered to him under sec. 46, he can remain in occupation of his holding at the rate for a period of five years [sec. 46 (7)].

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise, (namely) :—

Grounds on which non-occupancy-raiyat may be ejected.

- (a) on the ground that he has failed to pay an arrear of rent ;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

Extended to Orissa, (Not., Sept. 10th, 1891).

Ejection.—The terms of this section show that a non-occupancy-raiyat cannot be ejected from his holding except on the grounds specified in this section. Parting with the possession of a portion of the holding or denying the title of the person under whom the non-occupancy-raiyat holds is therefore not a ground of forfeiture, and a non-occupancy-raiyat

cannot be ejected for having done either (*Chandra Mohan Mukhopadhyay v. Bisseswar Chaturji*, 1 C. W. N., 158).

Clause (a).—This clause must be read with sec. 89, which provides that no tenant shall be ejected except in execution of a decree, and with sec. 66, which enables a non-occupancy raiyat to save himself from ejectment for arrears of rent by paying into Court the amount of the arrears within 15 days from the date of the decree, or within such further period as the Court may allow for the purpose.

Clause (b).—The provisions of this clause are subject to those of sec. 155, which require a landlord before suing a tenant for ejectment on this ground to serve a notice on the tenant specifying the misuse or breach of contract complained of, and giving him an opportunity of remedying the same. Under sub-section (4) of section 155 a tenant against whom a decree for ejectment on this ground has been passed can always save himself from ejectment by paying the compensation fixed by the Court for the misuse or breach of contract in question.

Clause (c).—From the terms of this clause it will be seen that a non-occupancy-raiyat admitted into occupation on a verbal or written but not registered lease is in a better position than a raiyat admitted into occupation under a registered lease. The former cannot be ejected on the ground specified in this clause (c); while the latter can be ejected on this ground. A non-occupancy-raiyat admitted to the occupation of land on a verbal lease, or one who is allowed to hold on for six months after the expiry of the term of a registered one, (see sec. 45), therefore, cannot be ejected so long as he pays the rent, does not misuse the land, or break his contract or refuse to pay such an enhanced rent as a Court may consider fair and equitable. In a case in which it was sought to eject a tenant from certain homestead land, held as part of a *raiya* holding, under a lease which contained a stipulation that the tenant would quit whenever the landlord called upon him to do so, it was ruled that sec. 44, cl. (c), only applied when a lease is granted for a fixed term, and that under sec. 178, sub-sec. 1, cl. (c), the stipulation in the lease could not be enforced (*Nando Kumar Guha v. Kali Kumudin Haji*, 3 C. W. N., xlvii). This clause is limited to cases in which the raiyat has been admitted to occupation under the lease (*Kamini Prasad Rai v. Khudadad Khan*, 9 C. W. N., cclxxxvii).

Limitation.—The period within which a suit for the ejectment of a raiyat on the ground that he has used the land in a manner which unfits it for the purposes of the tenancy may be brought is two years under art. 32, sched. II of Act XV of 1877 (*Soman Gope v. Raghunath Ojha*, 24 Calc., 160; 1 C. W. N., 223; *Sarup Das v. Jageswar Rai*, 26 Calc., 564). The period for a similar suit on the ground that the raiyat has

broken a condition on breach of which he is under the terms of the contract between his landlord and himself liable to be ejected is one year (art. 1, Sched. III of this Act). The period of limitation applicable to the case of a non-occupancy raiyat who has been dispossessed from his holding otherwise than in execution of a decree, is either 6 years or 12 years, as provided in art. 120, or art. 142, Act XV of 1877 (*Tamizuddin v. Ashraf Ali*, 31 Calc., 647 : 8 C. W. N., 446). But this has been altered in the province of Bengal by sec. 61, Act I. B. C., of 1907, which has modified art. 3, Sched. III of this Act, and enacts that the period of limitation for a suit for the recovery of possession by a *raiya*t is two years from the date of dispossession.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Extended to Orissa, (Not, Sept, 10th., 1891).

This section has been repealed in Bengal by sec. 2, Act I, B. C. of 1907 and in Eastern Bengal by Act I, E. B. C., of 1908. It has, however, been provided in Schedule III of this Act [see art. 1 (a)] that the period of limitation for the ejectment of a non-occupancy raiyat on the ground of the expiration of the term of his lease is 6 months, as is now provided in this section. The only change, therefore is to do away with the necessity of giving a notice to quit to a non-occupancy raiyat not less than six months before the expiry of the term. In the Notes on Clauses on the Bengal Tenancy (Amendment) Bill, 1906, it is said :

“Experience has shown that the necessity to serve a notice to quit on a non-occupancy raiyat holding under a lease is often overlooked by the landlord, and that, even when served, the landlord has no means of proving service. It is therefore proposed to dispense with the notice by repeal of section 45, at the same time transferring the provision as to limitation for a suit for ejectment of non-occupancy raiyat to Schedule III of the Act.”

Service of notice.—Rule 2 of Chap. V of the Govt. rules under this Act provides that a “notice to quit under this section shall be served

through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, and shall be subject to the same process fee."

Effect of non-service of notice in due time.—The notice referred to in this section must be served in due time, and if this be not done, the non-occupancy raiyat by holding over does not become a trespasser, but remains a tenant and cannot be ejected as a trespasser (*Gobardhan Saha v. Karuna Bewa*, 25 Calc. 75).

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause

a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Extended to Orissa, (Not, Sept. 10th 1891).

Sub-Section (2).—The rule framed by Government under this sub-section is to be found in rule 3, Chap. V of the Government rules under the Act (Appendix 1).

Sub-section (4).—The rule framed by Government under this sub-section is to be found in rule 4 of Chap. V of the Government rules.

Sub-section (9).—This sub-section is not exhaustive. It was not intended that if there was no land of a similar description and with like advantages in the same village as the land in suit, it should be impossible to enhance the rent of a non-occupancy raiyat upon any other ground (*Hossain Ali Khan v. Hati Charan Saha*, 27 Calc., 476 : 4 C. W. N., 321).

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of
"admitted to
occupation."

Extended to Orissa, (Not., Sept. 10th, 1891).

When a lease is executed after the tenant was in possession with a view to a continuance of his occupation, the case falls within the words of the section (*Kamini Prasad Rai v. Khududad Khan*, 9 C. W. N., cclxxxvii).

CHAPTER VII.

UNDER-RAIYATS.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, (namely) :—

Limit of rent
recoverable
from under-
raiyats.

- (a) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent ; and
- (b) in any other case—twenty-five per cent.

Extended to Orissa, (Not., Sept. 10th, 1891).

Clause (a)—The provisions of this clause are retrospective (*Ram Kumar Jugi v. Jafar Ali*, 26 Calc., 199 note ; *Guru Das Shit v. Nand Kishor Pal*, 26 Calc., 199 ; *Babuludin Mahomad v. Dwarka Nath Singh*, 28 Calc., 166).

Restriction on
ejection of un-
der-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except— . .

- (a) on the expiration of the term of a written lease ;
- (b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

Extended to Orissa, (Not., Sept. 10th, 1891).

Ejection—This section would seem to prescribe when an under-raiyat can be ejected arbitrarily at the pleasure of his landlord. For an under-raiyat can always be ejected for non-payment of arrears of rent (sec. 66). But he does not forfeit his under-tenancy on any other ground. He, therefore, cannot be ejected for denying his landlord's

title (*Dhora Kairi v. Ram Jewan Kairi Mahton*, 20 Calc., 101). In this case it is added that an under-raiyat cannot be ejected from his holding except after notice to quit, as prescribed in clause (b) of this section. This must of course mean "except also where he is liable to be ejected on the expiration of the term of a written lease," in which case it would appear no notice to quit need be served on him [clause (a)]. In similar circumstances a non-occupancy raiyat requires a notice to quit to be served on him before he can be ejected, (sec. 45), (except in Bengal where section 45 has been repealed by Act I, B. C., of 1907), and when a non-occupancy raiyat is holding without a written lease, he cannot be ejected at his landlord's pleasure at all, but only on the grounds specified in sec. 44. An under-raiyat, who has been let into land under a *kubulyat* but has been allowed to hold on for a number of years after the expiry of the period mentioned in the *kabulyat*, comes within the provisions of sec. 49, clause (b), and cannot be ejected without the service on him of a notice to quit, and the bringing of a suit for ejectment against him cannot be regarded as sufficient notice (*Rabiram Das v. Uma Kant Chakravarti*, 2 C. W. N., 238). After the expiry of a written lease, a mere delay in the institution of a suit by the lessor for the ejectment of the lessee without notice to quit, is no reason for dismissal of the suit on the ground that the lessee was allowed to hold over (*Ratan Lal Gir v. Farshi*, 34 Calc., 396). A suit for ejectment cannot be brought until after the liability to ejectment has arisen (unreported case, S. A., No. 1436 of 1895, decided Dec. 2nd., 1896). But if the suit is brought before the expiry of the Bengali year in respect of the arrears of rent for that year, the raiyat landlord is not entitled to eject the under-raiyat tenant under sec. 66 (*Guru Das Shut v. Nund Kishor Pal*, 26 Calc., 199). Section 49 refers to a suit in ejectment brought by the immediate landlord of the under-raiyat and has no application to a suit in which the plaintiff is not such immediate landlord (*Badan Chandru Das v. Rajeswari Debi*, 2 C. L. J., 570). When the lands included in the holding of an agricultural raiyat consisted partly of agricultural and partly of homestead land, and the portion that could be used as a homestead was let out for use as a homestead:—*held*, that the under-tenant was an under-raiyat and that to maintain a suit in ejectment a notice under sec. 49, cl. (b) was necessary (*Mohendra Nath Sarkar v. Biswanath Haldar*, 29 Calc., 231 : 6 C. W. N., 183). The purchaser of an under-raiyati interest, whom the landlord refuses to recognize, is entitled to the surplus sale proceeds on the sale of the holding (*Haran Chandra Sen v. Pulin Chandra Saha*, 5 C. L. J., 35n).

Leases.—This section contemplates two classes of leases (a) written leases for terms and (b) unwritten leases. It does not contemplate

the case of an unwritten lease without any term (*Mahendra Nath Sipai v. Parbati Gharan Das*, 8 C. W. N., 136 ; *Idu Gazi v. Chandra Kali Sundrani*, 8 C. W. N., 139 ; *Mudan Chandra Kapali v. Jaki Karakar*, 6, C. W. N., 377).

Notice to quit.—"The section does not prescribe any period of notice or that the suit shall not be brought until the expiry of a certain time after expiry of the period of notice. The effect of the section seems to be that the landlord can serve a notice to quit at any time in the course of the year, but that he shall not eject the raiyat until the end of the agricultural year next following the year in which the notice to quit is served, that is to say, the under-raiyat must, under any circumstances, get a full year expiring at the end of the agricultural year from the time when the notice is served. The legislature advisedly seems to have refrained from fixing any period of notice, and the section was probably framed, as it is framed, with the view of doing away with all questions of the reasonableness or otherwise of the notice, it being considered sufficient to intimate the landlord's intention of determining the tenancy and leaving the law to operate so that the raiyat, if he chooses to remain on the land, shall not be ejected until a certain time had expired after the notice was served. The circumstance that the landlord has called upon the tenant to quit at a time when he could not compel him to do so, does not we think vitiate the notice" (*Naharullah Patwari v. Madan Ghazi*, 1 C. W. N., 133 ; *Dwarkanath Santra v. Rani Dasi*, 28 Calc., 308). In a suit brought by the plaintiff landlord to recover *khas* possession of a holding which he had purchased at a sale held in execution of a decree for arrears of rent obtained against the tenant, the defendant pleaded that he was an under-tenant with a right of occupancy : *held*, that, as the sub-letting was otherwise than by a registered instrument and without the landlord's consent, it was invalid as against him and it was not necessary for him to follow the procedure prescribed by s. 167 (*Piari Mohan Mukhurji v. Badal Chandra Bagdi*, 28 Calc., 205). If a landlord (permanent tenure-holder) purchases from his occupancy-raiyat his right, title and interest in the holding by a deed of sale, he cannot by virtue of such purchase eject the under-raiyat who was let into the land by the occupancy-raiyat without serving on him a notice to quit under sec. 49 (b), even if the sub-letting was made without the landlord's consent and otherwise than by a registered instrument (*Amirullah Mahomed v. Nazir Mahomed*, 34 Calc., 104 : 3 C. L. J., 155). See also *Fazil v. Keramuddin*, (6 C. W. N., 916). But when a raiyat granted a permanent sub-lease, and an assignee of the interest of the under-raiyat sub-let to the plaintiff who was dispossessed by the purchaser of the right, title and interest of the raiyat at an execution sale, and sued to

recover possession ; *held*, that he could not on the ground of mere prior possession claim the protection afforded by sec. 49 (b) to an under-raiyat with a *bona fide* subsisting tenancy, whose permanent lease is void (*Ramgati Mandul v. Shyama Charan Dutta*, 6 C. W. N., 919). The raiyat who gives a sublease for an indefinite period is not entitled to evict his sublessee by giving a notice under sec. 49 (b) (*Tamijuddi v. Ajar*, 13 C. W. N., 183) and if there is a specific clause for resettlement after the expiry of nine years, the sublessee can save himself from ejectment by pleading his right to a specific performance of the contract to resettle (*Surendra Nath Sen v. Dinabandhu Naek*, 13 C. W. N., XXVIII).

The law does not require the notice to be signed by the landlord. It is sufficient if it is given at his instance (*Mohendra Nath Sarkar v. Biswa Nath Halder*, 6 C. W. N., 183).

No form of notice to quit to an under-raiyat is prescribed. When such notice calls upon the tenant to quit at the end of the agricultural year in which it is given, but the suit is not brought till the end of the following agricultural year, the suit is good. But if after the giving such a notice the suit is instituted at the end of the agricultural year in which the notice was given, it is premature (*Sailendro Nath Mukerji v. Bhairub Chander Kolay*, 2 C. L. J., 107 n).

Service of notice.—As there is no special rule for the service of the notice to quit under clause (b), its service should apparently be effected in accordance with rule 3, chap. I of the Government rules under the Tenancy Act, *i. e.*, in the manner provided in the Civil Procedure Code for the service of a summons. If the notice to quit has not been served in this manner, the suit for ejectment should be dismissed. See note to this rule, App. I. Service through the post is not good service (*Taradas Malakar v. Ramdoyal Malakar*, 2 C. W. N., 125 ; *Loknath Gope v. Bitambar Ghosh*, 3 C. W. N., 215 ; *Makhan Lal v. Kuldip Narain*, 27 Calc., 774). An objection as to the mode of service of the notice cannot be taken for the first time in second appeal (*Loknath Gope v. Pitambar Ghosh*, 3 C. W. N., 215).

Occupancy rights.—Under-raiyats may acquire occupancy rights by custom or usage. This is apparent from illustration 2 to sec. 183, which is as follows :—"The custom or usage that an under-raiyat should under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication, modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act."

In sec. 113, too, reference is made to the holding of an under-raiyat having, and to that of an under-raiyat not having, occupancy rights.

Other rights of under-raiyats.—The rights of an under-raiyat are not heritable (*Keramulla v. Afajan*, 8 C. W. N., 481). But this was distinguished from by a Full Bench which laid down that irrespective of custom or local usage, the heir of an under-raiyat under an annual holding is entitled on the death of the under-raiyat to remain in possession of the land until the end of the then agricultural year, for the purpose, if the land has been sub-let, of realising the rent which might accrue during the year ; or, if not sub-let, for the purpose of tending and gathering in the crops (*Arif Mandal v. Ramratan Mandal*, 8 C. W. N., 479 : 31 Calc., 757). See also *Jamini Sundari Dasi v. Rajendra Nath Chakravarti*, (11 C. W. N., 519), in which it was decided that the heirs of an under-raiyat under an annual holding do not acquire any interest in his holding by inheritance. The rights of an under-raiyat are, apparently transferable by custom or usage (sec. 183), as under the old law (*Bonamali Bajadar v. Koilash Chandra Mazumdar*, 4 Calc., 135). An under-raiyat may sub-let in his turn, for though sec. 85 apparently contemplates sub-letting by raiyats, yet in sec. 4 (3) under-raiyats are defined as “tenants holding whether immediately or *mediately* under raiyats.” He can protect himself against the extinction of his rights in the land in consequence of a surrender of the holding by his raiyat landlord only by means of a registered instrument [sec. 86 (6)]. The grant of a *mukasari* lease may convert tenants, who were originally under-raiyats, into raiyats holding at fixed rates (*Baburam Meddu v. Umesh Chandra Parui*, 2 C. W. N., CCXXXIV).

A sub-lease differs from an assignment of lease in that it creates no privity of contract between the sub-tenant and the landlord ; the landlord has to deal with his lessee and not with the sub-tenants of the latter. A landlord putting an end by proper notice to the tenancy of his tenant thereby determines the estate of the under-tenants of the latter (*Timmappu v. Rama Venkanna*, 21 Bom., 311).

Possessory suits under sec. 9 of the Specific Relief Act.—

Possessory suits under sec. 9 of the Specific Relief Act can be maintained by a landlord whose tenants in actual possession have been dispossessed (*Bindu Basini Choudharani v. Jahnavi Choudhrani*, 13 C. W. N., 303) : but see *Sonaton Shome v. Sheikh Helim*, (6 C. W. N., 616) and *Janoki Nath v. Dinamani*, (13 C. W. N., 305).

Limitation.—An under-raiyat who has been ejected and seeks to recover possession must now under Act I, B. C., of 1907 bring his suit within 6 months of the date of ejectment. See art. 3, Sched. III, as amended by sec. 61, Act I, B. C., of 1907.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Relation of landlord and tenant must exist before provisions of this Act can be applied.—As this Act is an Act relating to the law of landlord and tenant, the relation of landlord and tenant must exist between the parties before its provisions can be applied. This rule was laid down in many cases under the former rent law. See *Hari Prasad v. Kunjo Bihari Saha*, W. R., F. B., 29; *Nandi Das v. Tiwari Lal*, W. R., Sp. No., 1864, Act X, 75; *Jishan Hossein v. Bakar*, 3 W. R., Act X, 3; *Bharat Chandra Sen v. Osimudin*, 6 W. R., Act X, 56; *Ramessar Adhikari v. Watson & Co.*, 7 W. R., 2; *Dayal Chund Sahai v. Nabin Chandra Adhikari*, 16 W. R., 235; 8 B. L. R., 180; *Jalha v. Kailash Chandra Dey*, 10 W. R., 407; *Chandra Nath Chaudhuri v. Ahsanullah Mandal*, 10 W. R., 438; and *Lachmipat Das v. Inayat Ali*, 22 W. R., 346. The only exception to this rule would seem to be in the case provided for in sec. 157, when a landlord suing for ejectment of a trespasser may as an alternative relief claim that he may be declared liable to pay a fair and equitable rent for the land occupied by him. As to how the relation of landlord and tenant arises between parties, see note to sec. 3 (3), pp. 23-26.

A landlord is bound to give, and maintain his tenant in peaceable possession.—In every agreement to lease there is an implied contract that the lessor will give peaceable possession of the land leased to the lessee (*Mani Datta Singh v. Campbell*, 11 W. R., 278; *Radha Nath Chaudhuri v. Jai Sundra Maitra*, 2 C. L. R., 302). Every lessor, when he grants a lease, enters into an implied understanding to give peaceable possession of the land to his lessee, and it is not necessary for the lessee to apply to be put in possession (*Mani Datta Singh v. Campbell*, 12 W. R., 149). A landlord cannot claim rent where the lessee has never obtained possession (*Harish Chandra Kundu v. Mohini Mohan Mitra*, 9 W. R., 582; *Bullen v. Lalit Jha*, 3 B. L. R., App., 119). He is bound to secure quiet possession to his lessee (*Krishna Sundra Sandyal v. Chandra Nath Rai*, 15 W. R., 230). If he dispossesses him in any way, he cannot claim rent (*Kadambini Dasi v. Kashi Nath Biswas*, 13 W. R., 338; *Govind Chand Jati v. Man Mohan Jha*, 14 W. R., 43; *Haimabati Dasi v. Srikrishna Nandi*, 14 W. R., 58). There need not be complete eviction of the lessee to enable the latter to claim exemp-

tion from liability to pay rent (*Lalita Sundari v. Sarnamayi Dasi*, 5 C. W. N., 353). But the landlord does not dispossess his tenant merely by taken *kabulyats* from his tenant's under-tenants, if the tenant's possession is not actually disturbed (*Mani v. Kalachand*, 9 C. W. N., 871). He is further bound to protect him against eviction by title paramount (*Gopanand Jha v. Govind Prasad*, 12 W. R., 109; *Braja Nath Pal Chaudhri v. Hira Lal Pal*, 10 W. R., 120 : 1 B. L. R., A. C., 87); but not against the wrongful acts of third parties (*Govind Chandra Chandra v. Krishna Kanta Dutta*, 14 W. R., 273; *Rang Lal Singh v. Rudro Prasad*, 17 W. R., 386; *Donzelle v. Giridhari Singh*, 23 W. R., 121). When the superior holders of a tenure over the plaintiff compelled his tenants to attorn to them and pay rent accordingly, this was held not to be in law an ouster of the plaintiff, and the plaintiff obtained a decree for rent against the defendants who were said to have a cause of action for damages against the superior holders of the tenure (*Chandra Nath Bhattacharji v. Jagat Chandra Bhattacharji*, 22 W. R., 337). When the act of a landlord is not a mere act of trespass, but something of a graver character interfering substantially with the enjoyment by the tenant of the demised property, the tenant is entitled to a suspension of the rent during such interference, even though there may not be actual eviction (*Dhanpat Singh v. Mahomed Kazim Ispahain*, 24 Calc., 296). A lessor is not entitled to claim rent from the lessee for the period during which he wilfully disturbs the lessee's quiet possession. The law does not require that there should be a complete eviction of the lessee in order that he may be exempted from liability to pay rent (*Lalita Sundari v. Sarnamayi Dasi*, 5 C. W. N., 353). So, also, in *Haro Kumari v. Purna Chandra Sarbogyia*, (28 Calc., 188), it was held that a landlord is not entitled to recover rent for the lands in the possession of a tenant, who holds a tenure under a lease which reserves rent at a certain rate per bigha, when he has dispossessed the tenants from other lands of the tenure, inasmuch as it cannot be said that each bigha of land is separately assessed and separately chargeable with rent. But a lessee who has lost a portion of the lands covered by the lease is not entitled to suspend payment of rent, if the dispossession has been effected not by the landlord, but by other lessees under him (*Kali Prasanna Khasnavis v. Mathura Nath Sen*, 34 Calc., 191), nor if he has lost possession in the first instance by reason of an act of nature (*e.g.* the action of a river) and subsequently upon reformation of the land the landlord has settled it with a stranger (*Rai Charan Shukr Masumdar v. The Administrator-General of Bengal*, 9 C. L. J., 578 : 13 C. W. N., 853).

These rulings generally agree with the provisions of section 108 of the Transfer of Property Act, clauses (b) and (c); but the former of these

clauses now provides that the lessor is only bound to put the lessee in possession of the property on his requesting him to do so.

Burden of proof as to receipt of possession.—In a suit to recover arrears of rent under a *kabulyat*, the defendant who had paid rent for upwards of four or five years, pleaded that he had obtained possession of a portion only of the lands demised. It was held that the onus of proving this plea lay on the defendant (*Beni Madhub Mukhurji v. Sridhar Deb Ghatak*, 10 C. L. R., 555).

Landlords cannot grant leases for terms exceeding periods of their interests.—Mr. Field in his Digest, art. 6, p. 7, formulates the law on this point as follows :—"No person having a limited interest in land is competent to grant a lease which shall be valid for any purpose or period in excess of his own interest." See Reg. XVIII of 1812, sec. 2; *Mohan Koer v. Zoraman*, Marsh, 166; *Kailash Chandra Biswas v. Biressari Dasi*, 10 W. R., 408; *Damri Shaikh v. Bissessur Lal*, 13 W. R., 291; *Harish Chandra Rai v. Sri Kali Mukhurji*, 22 W. R., 274; *Sarat Sundari Debi v. Binni*, 25 W. R., 347; *Madhu Sudan Singh v. Rooke*, 25 Calc., 1: L. R., 24 I. A., 164: 1 C. W. N., 433. See *contra*, *Hiramani v. Ganganarain Rai*, 10 W. R., 384. Mr. Field adds :—"A lease of the lessor's interest and of something in excess is void as to the excess merely, and is valid to the extent of the lessor's interest; provided that, if the lessor acquires such excess after the execution of the lease, such lease is valid as against him for such excess also" (*Kurn Chobe v. Janki Prasad*, 1 N. W. P. Rep., 164; *Amir Ali v. Hira Singh*, 20 W. R., 291; sec. 115, Act I of 1872).

But see sec. 191 of this Act, which apparently allows a landlord of temporarily settled land to grant a lease at a particular rate of rent beyond the term of his own settlement, provided the tenant's right so to hold the land has been recognized by a duly empowered Revenue authority.

Determination of relation of landlord and tenant.—Until the relation of landlord and tenant is legally determined, the landlord cannot dispossess the tenant (*Chaitan Singh v. Sadhari Monim*, 5 C. L. J. n, 62). A suit for ejectment of a tenant cannot be maintained, unless the tenancy has been determined *i. e.*, unless there has been notice to quit, or a demand for possession (*Deo Nundan Prasad v. Meghu Mahton*, 11 C. W. N., 225: 34 Calc., 57: 5 C. L. J., 181; *Anandamoyi v. Lakshi Chandra*, 33 Calc., 339: 3 C. L. J., 274.)

*Rules and Presumptions as to amount of rent.**Rules and Presumptions as to amount of rent.**Rules and Presumptions as to fixity of rent.*

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement.

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Former and present law.—The former law was contained in secs. 4 of Act X of 1859 and of VIII, B. C., of 1869, and 16 and 17 of these Acts respectively, and was to the effect that the presumption arose when it was proved that the rent at which the land had been held had not been changed for twenty years, and it has been ruled that it is not necessary in order that the presumption may arise to prove that the land to which the suit relates has been the subject of a permanent settlement (*Sadanand Mahanti v. Nauratan Mahanti*, 16 W. R., 289 : 8 B. L. R., 280). The present law prescribes that the presumption will arise when there is proof that the rent or rate of rent has not been changed, but it restricts the cases in which the presumption arises to those in which it is shown that the land has been held by a tenure-holder or raiyat or his predecessors in interest and excludes those cases in which it may have been held by strangers. The presumption may arise in the case of a *ghatwali* tenure (*Gauri Kant v. Ram Gopal*, 2 C. L. J., 379). The onus lies on the tenant to prove that he has held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, or for 20 years or more preceding the suit (*Govind Priya v. Ratan Dhupi*, 4 C. L. J., 37).

In what cases presumption cannot arise.—It is provided in sec. 115 that when the particulars mentioned in section 102, cl. (b), have been recorded under chap. X of the Act, the presumption under sec. 50 shall not thereafter apply to the tenancy. See note to that section and *Secretary of State v. Kazimudin*, 26 Cal., 617, also *Radhu Kisore Munhya v. Umed Ali*, 12 C. W. N., 904. The presumption can also not arise in the case of produce rents, which, as pointed out in the note to sec. 18, (p. 81) are not fixed rents. (See also Selections from papers relating to the Bengal Tenancy Act, 1885, p. 421). The presumption cannot arise except in a suit or proceeding under the Act (*Nilmani Maitra v. Mathura Nath Joardar*, 4 C. W. N., cliv : 5 C. L. J., 413 ; *Gauri Kant v. Ram Gopal*, 2 C. L. J., 379 ; *Rasomai Purkhait v. Srinath Mairi*, 7 C. W. N., 132 ; *Sarat Chandra Ghosh v. Sham Chand Singha*, 10 C. W. N., 930 ; *Mahabir Pershad v. Charles Fox*, 9 C. L. J., 467). But the principle of section 50 is a useful guide to the courts in determining the nature of a tenancy in a question of apportionment of compensation between landlord and tenant (*Nandalal Gossami v. Atarmoni Dasi* ; per Maclean C. J., 35 Cal., 763 : 12 C. W. N., 432).

Proof of payment necessary to raise presumption.—A raiyat is bound to give strict proof of a uniform payment of rent for twenty years. This is a matter which should not be decided in his favour on mere inference (*Sham Lal Ghosh v. Boistab Charan Mazumdar*, 7 W. R., 407; *Rajnarain Chaudhri v. Atkins*, 1 W. R., 45; *Mahmuda Bibi v. Haridhan*, 5 W. R., Act X, 12; *Ram Kishor Mandal v. Chand Mandal*, 5 W. R., Act X, 84; *Prem Sahu v. Niamat Ali*, 6 W. R., Act X, 90; *Ram Jadu Ganguli v. Lakhi Narain Mandal*, 8 W. R., 488. But see *Radha Nath Sarkar v. Binodi Pal*, 3 W. R., Act X, 151). *Ex-parte* summary decrees are not satisfactory proof that a variation has taken place (*Kali Kant Rai v. Ashrafunissa*, 2 W. R., 326). Uniformity in the amount actually paid is not required to be proved, but uniformity in the rate agreed upon, either expressly or impliedly, between the parties to be paid (*Moran & Co. v. Anand Chandra Mazumdar*, 6 W. R., Act X, 35); and the question to be tried is not whether the rent has been paid at a uniform rate, but whether it has not been changed at any time within the twenty years prior to the institution of the suit (*Ahmad Ali v. Ghulam Ghafur*, 11 W. R., 432; *Sham Charan Kundu v. Dwarkanath Kabiraj*, 19 W. R., 100). On the other hand, the amount paid is not conclusive evidence of the amount of rent at which the land is held and may be rebutted by showing that the actual rent is greater or less (*Anandu Mayi Dasi v. Sarnomayi*, 6 W. R., Act X, 83). A trifling difference in the *jama* will not necessarily affect the fact of uniform payment of rent (*Gopal Chandra Basu v. Mathura Mohan Banurji*, 3 W. R., Act X, 132; *Haronath Rai v. Amir Biswas*, 1 W. R., 231; *Harro Nath Rai v. Chitramani Dasi*, 3 W. R., Act X, 122; *Ilahi Baksh v. Rupan Teli*, 7 W. R., 284); as for instance, a variation of one anna (*Mansur Ali v. Banu Singh*, 7 W. R., 282), or a reduction in the *jama* of one anna and three pies (*Ram Ratan Sarkar v. Chandra Mukhi*, 2 W. R., Act X, 74), or even of one rupee in sixty, (*Anand Lal v. Hills*, 4 W. R., Act X, 33), or the payment of a small illegal cess (*Samirudin Lashkar v. Harro Nath Rai*, 2 W. R., Act X, 93; *Dwarka Nath Singh v. Nabo Kumar Basu*, 20 W. R., 270), or an arrangement by which a certain rent in cash is to be paid in lieu of rent in kind (*Mitrajit Singh v. Tundan Singh*, 12 W. R., 14). But see note, p. 173. An abatement of rent in consequence of diluvion does not prove alteration of the rate of rent (*Reazunnissa v. Tukan Jha*, 10 W. R., 246); nor does an abatement on account of lands having been rendered unculturable by the overflow of a river (*Radha Govind Rai v. Kiamatul-lah*, 21 W. R., 401). The change of *sicca* rupees into company's rupees is not proof of any real change of rent (*Kali Charan Datta v. Sashi Dasi*, 1 W. R., 248; *Katyani Debi v. Sundari Debi*, 2 W. R., Act X, 60; *Tara-Sundari Barmanya v. Sibessar Chaturji*, 6 W. R., Act X, 51; *Watson &*

Co. v. Nando Lal Sarkar, 21 W. R., 420). It is not necessary that there should be evidence directly bearing on every year of the twenty ; it is sufficient if the whole interval is included between limits upon which the evidence bears, provided that the evidence is such as to lead to the belief that the rent was uniform throughout the intervening period (*Rash Bihari Ghosh v. Ram Kumar Ghosh*, 22 W. R., 487 ; *Rashmani Debya v. Haranath Rai*, 1 W. R., 280 ; *Katyani Debi v. Sundari Debi*, 2 W. R., Act X, 60 ; *Govind Karmokar v. Kumud Nath Bhattacharji*, 3 W. R., Act X, 148 ; *Tarini Kant Lahiri v. Kuti Mohan Sarma*, 3 W. R., Act X, 123 ; *Kamal Lochan Rai v. Zamirudin Sardar*, 7 W. R., 417 ; *Foschola v. Haro Chandra Basu*, 8 W. R., 284 ; *Sarnomayi v. Babu Khan*, 9 W. R., 270) ; and it is not absolutely necessary to prove uniform payment up to the date of suit (*Gaya Ram Dutta v. Guru Charan Chaturji*, 2 W. R., Act X, 59), even for the full period of twenty years (*Radhamayi De v. Agbar Nath Biswas*, 25 W. R., 384).

Pleadings on which presumption will arise—It is not necessary that the presumption should be specifically pleaded. It arises as a matter of course on proof of uniform payment for twenty years (*Bhairabnath Sundyal v. Mati Mandal*, W. R., Sp. No., Act X, 100 ; *Mannohan Ghosh v. Hasrat Sardar*, 2 W. R., Act X, 39 ; *Ram Ratan Sarkar v. Chandar Mukhi Debi*, 2 W. R., Act X, 74 ; *Jaga Mohan Das v. Purna Chandar Rai*, 3 W. R., Act X, 133 ; *Hem Chandra Chaturji v. Purno Chandra Rai*, 3 W. R., Act X, 162 ; *Raj Kumar Rai v. Assa Bibi*, 3 W. R., Act X, 170 ; *Nyamatullah v. Gobinda Chandra Datta*, 4 W. R., Act X, 25 ; *Dhan Singh Rai v. Chandra Kant Mukhurji*, 4 W. R., Act X, 43 ; *Guru Das Dandul v. Darbari*, 5 W. R., Act X, 86 ; *Sham Lal Ghosh v. Mulun Gopal Ghosh*, 6 W. R., Act X, 37 ; *Girish Chandra Basu v. Kali Krishna Haldar*, 6 W. R., Act X, 58 ; *Rakhal Das Tewari v. Kinuram Haldar*, 7 W. R., 242 ; *Pulin Bihari Sen v. Nemaï Chand*, 7 W. R., 472 ; *Manikarnika Chaudhurai v. Anand Mayi*, 8 W. R., 6 ; *Sudishti Lal Chaudhuri v. Nathu Lal Chaudhuri*, 8 W. R., 487 ; *Harak Singh v. Tulsi Ram Sahu*, 11 W. R., 84 ; *Mitrajit Singh v. Tundan Singh*, 3 B. L. R., App., 88 : 12 W. R. 14 ; *Harak Singh v. Tulsi Ram Sahai*, 13 W. R., 216 ; *Tirthanand Thakur v. Herdu Jha*, 9 Calc., 252). But the presumption will not arise if the pleadings contain any allegation inconsistent with the tenure or holding having been held since the time of the Permanent Settlement e.g., when they allege a commencement of the tenancy at a much later date (*Ram Krishna Sarkar v. Dilar Ali*, W. R., Sp. No., 1864, Act X, 36 ; *Hari Krishna Rai v. Babu* 1 W. R. 5 ; *Lachmi Prasad v. Ramghulam Singh*, 2 W. R., Act X, 30 ; *Ghura Singh v. Otar Singh*, 4 W. R., Act X, 15 ; *Harak Singh v. Tulsi Ram Sahu*, 11 W. R.,

84), or if the tenant sets up a proprietary right adverse to his landlord (*Bissonath Rai v. Bhairab Singh*, 7 W. R., 145). If a tenant has paid rent for over twenty years prior to the date of suit at a uniform rate, the presumption of law would be, unless rebutted, that that has been the rate from the time of the permanent settlement. The mere fact that the tenant has only been able to show that his rate of rent has not been changed from a particular year will not preclude him from the benefit of the presumption (*Mongola v. Kumud Chandra Singh*, 5 C. W. N., 60).

There is no presumption that the state of things described in Thak and Survey maps existed at the time of the Permanent Settlement (*Anando Huri Basak v. Secretary of State*, 3 C. L. J., 316).

How presumption may be rebutted.—The presumption can be rebutted by proof or admission that the tenancy began subsequently to the date of the permanent settlement (*Ramkrishna Sarkar v. Dilar Ali*, W. R., Sp. No., 1864, Act X. 36 ; *Hari Krishna Rai v. Babu*, 1 W. R., 5 ; *Magnamayi Debi v. Haro Chandra Raot*, 6 W. R., Act X, 27 ; *Kunda Misra v. Ganesh Singh*, 15 W. R., 193). But the production of a *pattah* dated subsequent to the Permanent Settlement, if not inconsistent with the inference that it is a continuance of a former state of things, will not interfere with or defeat the presumption (*Krishna Mohan Ghosh v. Ishan Chandra Mitra*, 4 W. R., Act X., 36 ; *Lachmi Narain Saha v. Kuchil Kant Rai*, 6 W. R., Act X, 46 ; *Karunamayi Dasi v. Shib Chandra De*, 6 W. R., Act X, 50 ; *Girish Chandra Basu v. Kali Krishna Haldar*, 6 W. R., Act X, 58 ; *Ram Chandra Dutta v. Jogesh Chandra Datta*, 19 W. R., 353 ; *Piari Mohan Mukhurji v. Kailash Chandra Buiragi*, 23 W. R., 58). If a tenant cannot show that a *pattah* of date subsequent to the Permanent Settlement is merely confirmatory of a previous holding, he is not entitled to the benefit of the presumption (*Jainudin v. Purna Chandra Rai*, 8 W. R., 129). The presumption may also be defeated by showing that the rent has varied, a variation from Rs. 11-15 to Rs. 13-4 being sufficient for this purpose (*Bishester Chakravartti v. Uma Charan Rai*, 7 W. R., 44). But see *Haru Nath Rai v. Amir Biswas*, (1 W. R., 230). But a mere alteration in the rate of rent on the part of a *samindar* or person other than the tenant will not prove a variation, unless it be shown that the tenant submitted to or paid that varied and enhanced rent (*Gopal Mandal v. Nobo Krishna Mukhurji*, 5 W. R., Act X, 83). A decree for enhancement, though the rent at the enhanced rate has never been collected under it, is also sufficient for the purpose (*Rakhal Das Basu v. Ghulam Sarwar*, 2 W. R., Act X, 69 ; *Udai Narain Sen v. Tarini Charan Rai*, 11 W. R., 496 ; *Naffar Chandra Pal v. Poulgon*, 19 W. R., 175 ; *Durga Charan Chatterji v. Dayamoyi Dasi*, 20 W. R., 243. But see *Kali Kant Rai v. Ashrafunnissa*, 2 W. R., 326 ;

Jai Kishori Chaudhrain v. Gopal Lal Thakur*, 6 W. R., Act X, 28 ; *Haronath Rai v. Govind Chandra Datta*, 23 W. R., 352 : 15 B. L. R., 120 : L. R., I. A., 193). The payment of additional rent for additional land does not defeat the presumption (*Samirudin Lashkar v. Haro Nath Rai*, 2 W. R., Act X, 93). The fact of a raiyat having pleaded a *mukarari* tenure cannot disentitle him to the benefit of the presumption (*Chamarni v. Ainullah*, 9 W. R., 451).

The presumption will not be rebutted by showing that the estate within which the tenure is situated was not permanently settled in 1793. The section does not apply only to tenures forming part of an estate permanently settled by the permanent settlement of 1793 (*Tamasha v. Asutosh Dhar*, 4 C. W. N., 513).

Proviso to sub-section (2).—This proviso was introduced with a view to the introduction into Council of a Bill for the registration of the tenancies referred to ; but the Bill, though introduced into Council, was subsequently abandoned (Proceedings of the Bengal Council, Nov. 27th, 1886, p. 102).

Division or consolidation of holdings.—The provisions of sub-section (3) are in accordance with the rulings of the Courts under the former law. See *Sukhimani Haldar v. Ganga Gobinda Mandal*, W. R., Sp. No., Act X, 126 ; *Hills v. Bisharath Mir*, 1 W. R., 10 ; *Ram Kumar Mukhurji v. Raghob Mandal*, 2 W. R., Act X, 2 ; *Kenaram Mallik v. Ram Kumar Mukhurji*, 2 W. R., Act X, 17 ; *Gopal Chandra Basu v. Mathur Mohan Banurji*, 3 W. R., Act X, 132 ; *Hills v. Hara Lal Sen*, 3 W. R., Act X, 135 ; *Khoda Nawaz v. Nabo Krishna Rai*, 5 W. R., Act X, 53 ; *Raj Kishor Mukhurji v. Hurihar Mukhurji*, 10 W. R., 117 ; *Kashinath Lashkar v. Bama Sundari Debi*, 10 W. R., 429 ; *Sudhamukhi Dasi v. Ram Gati Karmakar*, 20 W. R., 419. But if it be found that one of the holdings constituting the tenure has been created since the decennial settlement, the tenant cannot ask for the benefit of the presumption (*Maula Baksh v. Judunath Sadu Khan*, 21 W. R., 267), and if the rent of an undivided share of a tenure has been enhanced, then, the whole tenure is liable to enhancement (*Sarat Sundari Debi v. Ananda Mohan Ghatak*, 5 Calc., 273 : 4 C. L. R., 448). But if a tenure is sub-divided into two tenures, it has been held that the presumption ceases (*Udai Chandra v. Nripendra Narain Bhup*, 13 C. W. N., 410 : 36 Calc., 287).

Effect of presumption in the case of occupancy raiyats.—The presumption created by section 50 does not operate to convert an occupancy raiyat into a raiyat holding at fixed rates, nor does it render the tenancy subject to the incidents of a holding at fixed rates as prescribed by section 18 of the Act (*Bansi Das v. Jagdip Narain Chaudhri*,

24 Calc. 152). The view expressed in this case was, however, dissented from by Amir Ali and Jenkins JJ., in *Dulhin Golab Koeri v. Balla Kurmi*, (1 C. W. N., cclxxxi). This case subsequently came before a Special Bench of five Judges, by which it was held that when the facts are such as to give rise to a presumption under sec. 50, sub-section (2), they do give rise to, or at least justify, the presumption that the raiyat is a raiyat holding at fixed rates (see *Dulhin Golab Koeri v. Balla Kurmi*, 2 C. W. N., 580 : 25 Calc., 744).

Record of rights.—Section 115 does away with the application of the presumption after an entry therein : but if the tenant can show uniform payment of rent for 20 years before the entry the presumption will apply (*Radhakishore Manikya v. Umedali* 12 C. W. N., 904).

Sub-section. (4)—This sub-section can only refer to the case of a tenure which is held for a term of years at the time of the suit or proceeding. When the term of a *Kabulyat* expired in 1872, this cannot preclude the tenant from the benefit of the terms of sec. 50 (2) (*Atafal Ali v. Ghulam Mahiudin*, 11 C. W. N., lxiii).

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Presumption as to amount of rent and conditions of holding.

If a suit for rent is decreed at the admitted rate without determining what the correct rental is, the presumption under this section will apply (*Kali Ray v. Protap Narain*, 5 C. L. J., 92).

Holding over.—Holding over means that the relation of landlord and tenant continues with the assent of both parties. The overt acts by which the relation may be continued are either the receipt of rent by the landlord or his assenting to the continuance of the tenancy by other acts or words (*Ratan Lal v. Faroshi*, 11 C. W. N., cxxxvi). When a tenant holds over after the expiration of his lease, he is not a trespasser (*Sadhu Jha v. Bhupwan Upadhyay*, 5 W. R., Act X, 17 ; *Ram Kheharwan Singh v. Sundra*, 7 W. R., 152 ; *Chaturi Sing v. Mukund Lal*, 7 Calc., 710), and he does so on the terms of his lease, on the same rent and on the same stipulations as are mentioned in the lease, until the parties come to a fresh settlement (*Kishori Lal De v. Administrator General of Bengal*, 2 C. W. N., 303. See also *Inayatullah v. Hahi Baksh*, W. R., Sp. No., 1864, Act X, 42 ; *Jumant Ali Shah v. Chatterdhari Sahi*, 16 W. R., 185 ; *Sheo*

Sahai Singh v. Bichan Singh, 22 W. R., 31; *Tara Chandra Banerji v. Amir Mandal*, 22 W. R., 394; *Altah Bibi v. Jugal Mandal*, 25 W. R., 234; *Beni Prasad Koeri v. Raj Kumar Chobe*, 6 C. W. N., 589; *Jagesh Chandra Rai v. Laljan*, 9 C. W. N., cviii). In the case of *Kishori Lal De v. Administrator General of Bengal*, it was further said that "there is no general rule of law to the effect that the lease of an agricultural tenant who holds over must be taken as renewed from year to year," and that "if any contract is to be implied, it should be taken to have been entered into so soon as the term of the former lease expired rather than at the beginning of each year." But the correctness of this *dictum* was doubted in *Ali Mamud Paramanik v. Bhagabati Debya* (2 C. W. N., 525), and *Administrator General of Bengal v. Asraf Ali*, (28 Calc., 233); and see Woodfall's Law of Landlord and Tenant, 12th edit., p. 207; 14th edit., pp. 230, 766. Where a tenant holds over after the expiration of his lease without further agreement, such holding over, though by English law styled a tenancy by sufferance, is wrongful. Slight evidence, however, will suffice to change his position into that of a tenant at will. Under art. 139, Sch. II., of the Limitation Act time begins to run against a landlord when the period of a fixed lease expires, when there is no evidence from which a fresh tenancy can be inferred, and not at some indeterminate date after that period (*Kanthappa v. Sheshappa*, 22 Bom., 893; *Chandri v. Daji Bhau*, 24 Bom., 504; *Madan Mohan Gossain v. Rameswar Malia*, 7 C. L. J., 615).

When the contrary is not shown.—If a decree for enhanced rent has been superseded by a subsequent arrangement between the parties, it cannot be acted upon (*Nobia Chandra Sarkar v. Gaur Chandra Saha*, 6 Calc., 759; 8 C. L. R., 151), and in a case in which the plaintiff sued for enhancement and the defendant entered into a compromise and agreed to pay rent at an enhanced rate for two years, it was held that on the expiry of those two years, the defendant was not liable to pay rent at the higher rate (*Barhanadin Haulader v. Mohan Chandra Guha*, 8 C. L. R., 511).

Notice to quit.—A raiyat holding over is not a trespasser and can not be ejected until his tenancy has been determined by a notice to quit or some other legal means (*Dalgleish v. Damodar Narain*, 8 C. L. J., 533).

Alteration of rent on alteration of area.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been

previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made ; and

- (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to--

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding ;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord ;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area ; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as

compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

[(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.]

[(6) When in a suit under this section the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situate, a practice of settlement being made after

measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any patta or kabuliyat, or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in any rent-roll relating to it, has been entered in such patta, kabuliyat or rent-roll after measurement.]

Extended to Orissa (Not., Oct. 17th, 1896). Sub-section (5) was added to the section by Act III, B. C., of 1898 and Sub-section (6) by s. 13, Act I, B. C., of 1907 and by Act I, E. B. C., of 1908.

Increase in area by accretion—Formerly there was a conflict of rulings as to whether a tenant had any right in land which had accreted to his tenancy. But the matter has now been set at rest by the Full Bench decision in *Gaur Hari Kaibartto v. Bhola Kaibartto*, (21 Calc. 233) in which it was decided that a raiyat who has a right of occupancy is entitled to hold lands accreted to his jote as an increment to it. Sec. 4 of Reg. XI of 1825 even applies to a person who is not an occupancy raiyat (*Mia Jan v. Akram Ali*, 5 C. L. J., 26n). Then, as to a landlord's right to rent for land so added to a tenant's tenure or holding, it was held under the former law that he would only be so entitled, provided the tenant was liable by his engagement or by established usage to such an increase of rent (see section 4, clause 1, Reg. XI of 1825 and *Jagat Chandra Datta v. Panioty*, 6 W. R., Act X, 48; *Gopal Lal Thakur v. Kumar Ali*, 6 W. R., Act X, 85; *Jagat Chandra Datta v. Panioty*, 8 W. R., 427; in review, 9 W. R., 379; *Ramnidhi Manjhi v. Parvati Dasi* 5 Calc., 823; *Ghulam Ali Chaudhri v. Kali Krishna Thakur*, 8 C. L. R., 517; 7 Calc., 479; *Brajendra Kumar Bhunik v. Upendra Narain Singh*, 8 Calc., 706; *Haro Sundari Dasi v. Gopi Sundari Dasi* 10 C. L. R., 559). Now under clause (a) of this section, a tenant is of course liable to pay additional rent for such land except in the circumstances specified. In a suit brought by the *Talukdar* of a certain *Mauzah* against the *dar-Talukdar* for a declaration that he was entitled to get rent at a certain rate, and in the alternative for compensation for use and occupation of the disputed land which was an accretion to the *Mauzah*, and in respect of which a settlement was made with him by Government treating it as a separate estate, the defence was that the suit was not maintainable unless a rental was assessed in the first instance, and that no arrears of rent could be claimed as there was no relation of landlord and tenant between the parties. *Held*, that the landlord could not treat the disputed land as a separate tenure, that the

increment was to be regarded as part of the parent estate, and treating it as part and parcel of the parent estate, he was entitled to get assessment of rent on the disputed land ; but he was not entitled in the suit to back rent or compensation for use and occupation (*Ahsanulla v. Mohini Mohan Das*, 26 Calc., 739).

Increase in area due to encroachment—A tenant may encroach upon either the neighbouring land of his own landlord or upon that of a third person. In the latter case he makes the encroachment for his landlord's benefit, and not for himself, and his landlord is entitled to additional rent for the land so added to the subject of the tenancy (*Naddiar Chand Saha v. Meajan*, 10 Calc., 820. See also *Andrew v. Francis*, 2 Hay's Reports, 560. and *Esubai v. Damodar Ishwardas*, 16 Bom., 558). In one case, *Guru Das Rai v. Issar Chandra Basu*, (22 W. R., 246), it was ruled that if a tenant's tenancy was permanent or he had a right of occupancy, he could not be ejected from lands added to his lands by encroachment while his tenancy lasted, but when the rent was re-adjusted the lands might be brought into calculation. But this was expressly dissented from in *Naddir Chand Saha v. Meajan*. When the encroachment is made on the adjoining land of his own landlord, it was at first held that his landlord's only remedy was to treat the tenant who had made the encroachment as a trespasser (*Rasham Bibi v. Bisso Nath Sarkar*, 6 W. R., Act X, 57 ; *DeCourcy v. Megh Nath Jha*, 15 W. R, 157) ; but in subsequent cases it was ruled that the landlord could either treat him as a tenant in respect of the excess land or as a trespasser at his pleasure (*David v. Ramdhan Chaturji*, 6 W. R., Act X, 97 ; *Rajmohan Mitra v. Guru Charn Aich*, 6 W. R., Act X, 106 ; *Sham Jha v. Durga Rai*, 7 W. R., 122 ; *Ghulam Ali v. Gopal Lal Thakur*, 9 W. R, 65) ; and this is the law now (*Ishan Chandra Mitra v. Ram Ranjan Chakravartti*, 2 C. L. J., 125). See sec. 157, and also the case of *Prahlad Teor v. Kedar Nath Basu*, (25 Calc., 302) in which it has been expressly said that "when a tenant encroaches upon the land of his landlord, though the landlord may, if he chooses, treat him as a tenant in respect of the land encroached upon, the tenant has no right to compel the landlord against his will to accept him as a tenant in respect of that land." But it does not follow that because the landlord has this option he can treat the tenant as a trespasser at any time after having exercised his option in treating him as a tenant for some time (*Abdul Humid v. Mohini Kant Saha*, 4 C. W. N., 508 ; *Abdul Hakim Saha v. Rajendra Narayan Rai*, 13 C. W. N., 635). If a tenant encroaches on the adjoining waste land of his landlord, his possession of the lands encroached upon can only commence to be adverse when a title adverse to his landlord is asserted

or the landlord becomes aware of the encroachment (*Wali Ahmed v. Tota Meah*, 31 Calc. 397; *Ishan Chandra Mitra v. Ram Ranjan Chakravarti*, 2 C. L. J., 125).

Adverse possession.—Mere non-payment of rent for 12 years by a tenant does not convert the tenancy in to adverse possession (*Prem Sukh Das v. Bhupia*, 2 All., 517, F. B.; *Troylukho Tarini v. Mohima Chunder*, 7 W. R., 400; *Rungo Lal Mundul v. Abdool Guploor*, 3 C. L. R., 119; 4 Calc., 314; *Poresh Narain Roy v. Kassi Chunder Talukdar*, 4 Calc., 661; *Dadoba v. Krishna*, 7 Bom., 34; *Taruchurna Perumal Nada v. Sangu Tien*, 3 Mad., 118). Similarly in the case of service tenure lands the fact that no services have been performed does not of itself make the holding adverse. To make the holding adverse there must be a refusal to perform service or a claim to hold the lands free of service (*Komargowda v. Bhimaji Keshav*, 23 Bom., 602). Even if the tenant during his tenancy pays the rent to a third person and attempts to substitute him in the place of his land-lord without openly renouncing or putting an end to the tenancy, the possession of the tenant shall be that of the landlord, unless such payment be made under such circumstances as amount in law to an eviction of the tenant as tenant of such landlord (*Parbutti Dassi v. Ram Chunder Bhattacharjee*, 3 C. L. R., 576). If a tenant encroaches on the adjoining land of his landlord, he must distinctly prove adverse possession and such adverse possession must be set up in defence to the suit. It must be shown that there was not merely possession but that such possession was with notice to the landlord and was known by the parties to be a trespass (*Krishna Govinda Juvardar v. Banka Behari Shaha*, 13 C. W. N., 698). Such possession can only commence to be adverse when a title adverse to the landlord is asserted or the landlord becomes aware of the encroachment. Acts indicative of possession must vary according to the nature of the property over which possession is exercised and in the case of waste lands, the cutting of grass and the grazing of cattle are ordinary acts by which possession is asserted. But when such acts are done by a tenant on the waste lands of his landlord, the principle can only apply if the acts done amount to an assertion of possession adverse to the landlord and are not acts presumably done with his permission or consent (*Wali Ahmed Chowdhury v. Tota Meah Chowdhury*, 31 Calc., 397; *Watson v. Government*, B. L. R., sup. vol., (1865) 18; 3 W. R., 73). So long as the tenancy is not determined the possession of the lessee is the possession of the lessor (*Parbutti Dassi v. Ram Chunder Bhattacharjee*, 3 C. L. R., 576; *Haradhan Roy v. Mulodhur Chunder Chowdhury*, 25 W. R., 56). Where there is a current lease and the tenant is dispossessed by a third party time does not commence to run against the landlord until the expiration of the lease. But when the lease has expired and the tenant is holding over with the land-

lord's consent and the possession of such party is adequate in continuity, publicity and extent so as to show that it is possession adverse to the landlord, the latter is not precluded from determining the tenancy and suing the trespasser in ejectment and his right to sue will be barred after 12 years of such possession (*Kishwar Nath Sahi Dev v. Kali Sankar Sahai*, 10 C. W. N., 343; *Sarat Sundari v. Bhobo Pershad*, 13 calc., 101; *Krishna Gobind Dhur v. Hari Churn Dhur*, 9 calc., 367; *Radha Moni Debi v. Collector of Kulna*, 4 C. W. N., 597). A sub-tenant holding land under a tenant of the landlord does not hold adversely to the landlord (*Bungsoy Bhookta v. Mohunt Meghu Lall*, 20 W. R., 398). See also note to this sec. at p. 184—"Increase in area due to encroachment."

A farmer may acquire by prescription the right of a permanent tenant by setting up such higher right adversely to the zemindar (*Bagdu Majhi v. Durga Prosad Singh*, 9 C. W. N., 292).

A landlord may plead adverse possession against his tenant (*Mokshda Das Mitra v. Hari Charan Chowdhury*, 9 C. L. J., 68 n.).

Constructive possession.—Occupation by a wrong-doer of a portion of land only can not be held to constitute constructive possession of the whole, so as to enable him to obtain a title by limitation (*Mohini Mohan Roy v. Promoda Nath Roy*, 24 Calc., 256; *Brojo Nath Bose v. Durga Prosad Singh*, 5 C. L. J., 583; *Jogendra Nath Rai v. Baldev Das Marwari*, 6 C. L. J., 735; *Ananda Hari v. Secretary of State*, 3 C. L. J., 316).

Increase in area found on measurement.—Under the old law, a tenant was not a trespasser in respect of land within the boundaries or clearly part, though in excess, of the area originally leased to him, and he could be sued for additional rent for this land (*Bipra Das De v. Sakirmani Dasi*, W. R., Sp. No. 1864, Act X, 38; *Saudumini Dasi v. Guru Prasad Datta*, 3 W. R., 14; *Gopinath Mukhurji v. Ram Hari Mandal*, 9 W. R., 476; *Ahmed Hossein v. Bandi*, 15 W. R., 91; *Pran Krishna Bagchi v. Mannohini Dasi*, 17 W. R., 34). But it was held that in order to ascertain what was actually leased to him, the boundaries of his land should be looked to and not the estimated area (*Abdul Mannah v. Baradu Kant Banerji*, 15 W. R., 394; *Modihudin Joardar v. Sandes*, 12 W. R., 439; *Shib Chandra Mahnich v. Brajonath Aditya*, 14 W. R., 301; *Pahalwan Singh v. Moheshwar Baksh Singh*, 16 W. R., P. C., 5; 9 B. L. R., 150; *Ishan Chandra Ghosh v. Pratap Chandra Rai*, 20 W. R., 224).

A second suit.—A second suit under this section is not barred under sec. 37 by the dismissal of a previous suit within 15 years (*Radhu-kisore Manikya v. Umed Ali*, 12 C. W. N., 904).

What a plaintiff must prove in suit under sub-section (1) (a).—To entitle a plaintiff to a decree for increased rent on the ground

of an alteration in the area of the defendant's holding, the plaintiff must show that the defendant is holding land in excess of what he is paying rent for, and, in order to do that, he must show for what quantity of land the defendant is paying rent (*Surjo Kanto Achary v. Baneswar Shaha*, 24 Calc., 251). A decree for additional rent on account of additional land cannot stand merely on the ground that the defendant's land as now measured by a particular standard is larger in area than the defendant admits. It must be shown that the defendant is in possession of more land than he has been previously paying rent for, or that the rent which he has been paying was not payable for the whole of the land which is in his possession, or that the pole with which the defendant's land has now been measured was the pole with which it was measured in the first instance (*Alif Khan v. Raghu Nath Prasad*, 1 C. W. N., 319). The expression "the area for which rent has previously been paid" means the area with reference to which the rent previously paid had been assessed or adjusted (*Rajendra Lal Goswami v. Chandra Bhuson Goswami*, 6 C. W. N., 318). It has, further, been held that the provisions of section 52 are applicable to settlement proceedings under Chap. X of this Act; so in such proceedings a *zaminidar* is not entitled to additional rent merely on showing that the tenants are in possession of land in excess of the areas entered in his *zamindari* papers, or in their rent receipts. It is incumbent on the *zaminidar* in such circumstances to show that the lands held by the tenants are in excess of the lands originally let to them in consequence of some encroachment or some alluvial increment, or that the previous settlement was made on the basis of a measurement, and the rates of rent applied to the area then determined, while, on a fresh measurement being made by the same length of measure, it has been found that he is entitled to receive some additional rent, which by carelessness or neglect or some other reason he had hitherto lost (*Guri Patro v. Reily*, 20 Calc., 579). In the case of *Sheoratan Koer v. Soth Gond*, Rule 200 of 10th, Sept, 1895, (unreported) circulated with Board of Revenue's C. O., No. 1 of March, 1896, it was pointed out that when in settlement proceedings the tenants admitted the landlord's claim to additional rent for excess lands, each of the tenants should be asked by the Settlement Officer what he understood and admitted to be the representation of the area of his previous holding, and that, then, the Settlement Officer would be in a position to determine whether on the new measurement such tenant was liable to additional rent on excess lands. When the tenants agreed to pay rent at certain rates on account of excess area it is for them to show that the areas were less than those contracted to be paid for (*Vil Madhab Saha v. Kadam Mandal*, 3 C. L. J., 740). When a *kabuliyat* executed before the passing of the Tenancy Act provided for the payment of rent

at a certain rate on any excess area, and the suit was for measurement only, the suit was held not to be under sec. 52 (*Matangini Dasi v. Ram Das Mallik*, 7 C. W. N., 93). To entitle a landlord to an increase of rent under sec. 52, he must prove facts and circumstances showing that there was some reason not within the control of the landlord for additional lands being included in the holding (*Ratan Lal Biswas v. Judu Halsana*, 10 C. W. N., 46). When the plaintiff adduces evidence to show that the standard of measurement prevalent at the time the claim is made was in use when the tenancy was created, and the defendant produces no rebutting evidence, the Court may presume that the state of things in existence at the time of the suit existed also at the inception of the tenancy (*Ishan Chandra Mitra v. Ram Ranjan Chakravarti*, 2 C. L. J., 125). A landlord is entitled to additional rent for excess lands only when he shows (a) what the quantity of land was at the inception of the tenancy; (b) that the rent was settled with reference to the area; (c) that no consolidated rent for the entire area let out was settled; and (d) that the quantity of land held at the time of suit is in excess of that originally let out (*Raj Kumar Sahay v. Ram Lal Singh*, 5 C. L. J., 538).

Oral evidence when inadmissible to prove area.—A contract of tenancy being inadmissible for want of registration, oral evidence as to the quantity of land held by the tenant is, under sec. 91 of the Evidence Act, not admissible to prove the same (*Govinda Chandra Bagchi v. Jogesheer Sarkar*, 1 C. W. N., xxiv).

Right to additional rent a recurring one.—The right to recover additional rent is a recurring one. A landlord is entitled to exercise it whenever he finds it necessary to do so (*Jotindra Mohan Tagore v. Chandra Nath Saha*, 6 C. W. N., 360). See also *Rudha Kisore v. Umed Ali*, 12 C. W. N., 904.

Back rent.—There is nothing to prevent the landlord from claiming back rents for any additional area, if such additional area was in the use and occupation of the raiyat, provided the claim is not barred by limitation (*Jagannath Mani v. Juman Ali*, 29 Cal., 247).

Reduction of rent for decrease in area. Under the former rent law and rulings all tenants were entitled to abatement of rent on the ground of diluvion or deficiency proved by measurement in the area of the subject of the tenancy. Thus a *patnidar* or other lease-holder could sue for abatement of rent on the ground of part of the lands of his *patni* having been resumed by Government as *Chakeran* land (*Hara Krishna Banurji v. Jui Krishna Mukhurji*, 1 W. R., 299), or on the ground of part of the land having been taken up for railway purposes

(*Prasannamayi Dasi v. Sundar Kumari Debi*, 2 W. R., Act X, 30 ; *Mahtab Chand v. Chitro Kumari*, 16 W. R., 201 ; *Uma Sankar Sarkar v. Tarini Chandra Singh*, 9 Calc., 571 ; *Watson & Co. v. Nistarini Gupta* 10 Calc., 544). A *dar patnidar* and a *hauladar* had similar rights (*Ram Narain Chakravarti v. Pulin Bihari Singh*, 2 C. L. R., 5 ; *Kamala Kant Das v. Pogose*, 2 W. R. Act X, 65). A tenant with or without a right of occupancy was entitled to an abatement of rent for land washed away, unless precluded by the terms of his *kabulyat* from claiming that abatement (*Imayatullah v. Ilahi Baksh*, W. R. Sp. No., 1864, Act X, 42), and such right passed to a purchaser on a sale of the tenant's right (*Kali Prasanna Rai v. Dhananjai Ghosh*, 11 Calc. 625). Now, a tenant cannot be precluded by the terms of his agreement from claiming an abatement of rent : for under sec. 178 (3) (f) nothing in any contract made after the passing of this Act (i.e., the 14th March 1885) can take away the right of a raiyat to apply for a reduction of rent under this section. But in *Satyendra Nath Thakur v. Nilkantha Singh*, (21 Calc., 383), in which a tenant was sued for arrears of rent of his jote, and compromised the case by executing a *solchnama*, agreeing to pay rent at 13as. per bigha on 4,300 bighas, and that no remission of rent should be claimed on any account whatever, and in which, the *jote* being subsequently sold in execution of a decree passed on the basis of the *solchnama*, the landlord sued the purchaser for arrears at the rate specified in the *solchnama*, it was held that the compromise was a valid and binding transaction, and, that being so, the purchaser was bound by it. The provisions of sec. 178 (3) (f) were not referred to in this case. Abatement could be claimed for land taken up by Government for a road (*Din Dyal Lal v. Tarku Kunwar* 6 W. R., Act X, 24), and on the ground of dispossession by title paramount (*Brajanath Pal Chaudhri v. Hiralal Pal*, 10 W. R., 120 ; 1 B. L. R., A. C., 87 ; *Gopamand Jha v. Govind Prasad*, 12 W. R., 109) ; but not if the tenant could not show that his lessor had had no title, and that the person who ousted him had a title (*Rung Lal Singh v. Rudra Prasad*, 17 W. R., 386). When the right to claim abatement was founded on an agreement its exercise might be barred by limitation (*Prasanna Mayi Dasi v. Dayamayi Dasi*, 22 W. R., 275). This cannot be the case under the present law, for the right to sue for abatement arises under this section and is not founded on agreement. If the raiyat knew that the area of land leased to him was less than that mentioned in his *pattah*, it was held that he was not entitled to abatement of rent on this ground (*Tripp v. Kali Das Mukherji*, W. R. Sp. No., 1864, Act X, 122). Nor would he be entitled to abatement, if he came into possession of a less quantity of land through his own fault (*Situmath Basu v. Sham Chand Mitra*, 17 W. R., 418). In a case in which land had been taken up for public

purposes, and the *samindar* declared he would allow no abatement of rent on this ground, and permitted the *patnidar* to appropriate the whole of the compensation paid by Government, it was held that a purchaser of the *patni* was not entitled to abatement of rent, as he must be presumed to have had notice of the proceedings (*Piari Mohan Mukhurji v. Aftab Chand*, 10 C. L. R., 526). But in another case in which the *samindar* made no such stipulation, it has been held that in such a case the *patnidar* is entitled to an abatement of rent, and also to some share of the compensation (*Bhabani Nath Chakravartti v. Land Acquisition Deputy Collector*, 7 C. W. N., 130). A decree had determined that lands leased in *mukarari* to a lessee with a fixed rent thereon were less in extent than they were specified to be in the *puttahs* that comprised them, the lessors not having title to the whole, and the lessee had obtained possession of the less estate. It was held that the lessee was entitled to a corresponding abatement of the rent reserved (*Imambandi Begam v. Kumleswari Prasad*, 21 Calc., 1005; L. R. 21, I. A., 118). A tenant holding under a permanent *mukarari* lease is not entitled to get abatement of rent by reason of a portion of the land in his occupation having been diluviated by the action of a river (*Nanda Lal Mukhurji v. Kaumudin*, 9 C. W. N., 886). When an abatement of rent has been granted by a landlord on condition that it is to continue for a limited term or during the continuance of certain circumstances, the original rent is revived as soon as the term expires, or the circumstances cease to exist (*Manindra Chandra Nandi v. Pran Krishto Sarkar*, 1 C. L. J., 98n).

Abatement of rent could be sued for or claimed as a set-off—Abatement of rent can be sued for, or be claimed as a set-off in a suit for arrears of rent (*Afsarudin v. Sarashibala*, Marsh., 558; *Barry v. Abdul Ali*, W. R., Sp. No., 1864, Act X, 64; *Din Dyal Lal v. Thakru Kunwar*, 6 W. R., Act X, 24; *Gaur Kishor Chandra v. Bonamali Chaudhri*, 22 W. R., 117). As rent is a recurring cause of action, a tenant may set up a claim to abatement in a suit for the rent of any particular year, notwithstanding the fact that he has paid full rent for several previous years (*Mahtab Chand v. Chittro Kumari*, 16 W. R., 201). But it has been held under the former law that though the Limitation Act may not prevent a defendant from setting up a claim for abatement, still a delay of 24 years in claiming it may disentitle him to relief in a Court of equity (*Ram Narain Chakravartti v. Pulin Bihari Singh*, 2 C. L. R., 5), and the same principle was applied in the case of a *tuluk* created before the Permanent Settlement and where diluvion was not pleaded until 30 years after the occurrence (*Ram Charan Basak v. Lucas*, 16 W. R., 279).

How reduction of rent can be obtained under the present law.—Section 52 (b) does not explain whether reduction of rent on

account of a decrease in area can be claimed as a set-off or only in a suit brought for the purpose. The words "every tenant shall be entitled," &c., seem to point to the conclusion that a reduction of rent on this ground may be claimed as a set-off. On the other hand, a reduction of rent on the grounds specified in sec. 38, *viz.*, (1) permanent deterioration of the soil of the holding, and (2) fall in the average local prices of food-crops, would seem to be obtainable by an occupancy raiyat only in a suit *instituted* for the purpose. The expression "tenant" in this section does not include the case of a mere co-sharer tenant who has only a fractional share in the tenure: it means the tenant of the tenure and not one of many tenants: so when a suit for rent is brought by some of several joint landlords against one of several joint tenants for recovery of the plaintiff's share of the rent, such tenant defendant cannot claim abatement under the provisions of this section. His remedy is to bring a suit for abatement making all the joint landlords and his co-sharers in the tenancy parties (*Bhupendra Narain Datta v. Raman Krishna Datta*, 27 Cal., 417: 4 C. W. N., 107).

Res judicata in cases of claims for reduction of rent.—

When a suit was brought for a year's rent, and the tenant claimed abatement, a judgment was obtained, which determined the amount to be abated on materials which would be applicable to one year as well as another. It was held that the question of abatement was determined between the parties not only for the year of which the rent was in suit, but for all future years (*Nabo Durga Dasi v. Faiz Baksh Chaudhuri*, 24 W. R., 403: 1 Cal., 202). In a suit for arrears of rent, the defendant admitted that the sum claimed was due, but pleaded that it was due for a larger area of land than that specified in the plaint. An issue was framed on this contention and decided against the defendant. The defendant then brought a suit to have it declared that a sum of money, equal in amount to the sum paid on admission in the former suit, comprised the rent due on all the lands held by him under the plaintiff in the former suit and it was held that this question was *res judicata* (*Bassan Lal Sukal v. Chandi Das*, 4 Cal., 686). But in a suit by raiyats against their *zamindar*, praying for measurement of certain land and for a declaration of the amount of their yearly rent, in which it appeared that in a previous suit brought by the *zamindar* for rent, the raiyats had alleged that the amount of rent and the extent of land had been overstated by the *zamindar*, but the Court decided that the raiyats were bound by a *jamabandi* signed by them, and refused to try whether the extent of land had been overstated, it was held that the suit was not barred as *res judicata* (*Raghu Nath Mandal v. Jaggat Bandhu Basu*, 7 Cal., 214: 8 C. L. R., 393). In a suit in which the plaintiff sued for

the rent of certain land, the defendant contended that he was not liable for the entire rent, as part of his land was in the plaintiff's possession. No issues were framed, and there was no measurement of the land, but it was held that the defendant had failed to prove his contention. The plaintiff then sued the defendant again for arrears of rent of subsequent years. The defendant had the land measured, adduced evidence, and raised the same plea as before; and it was held that the matter was not *res judicata*, and that it was open to him to do so, as the area of the land in the defendant's possession and the annual rent payable for the same had not been definitely determined in the previous suit (*Nil Madhab Sarkar v. Braja Nath Singh*, 21 Calc., 236.)

Proved by measurement.—These words in sub-section (1) (a) and (b) would seem to mean “proved in the course of the suit”; for the word “proved” would seem to imply the production of evidence in the course of a trial. Hence, a measurement precedent to the institution of the suit would not seem to be essential before a suit can be brought for increase or reduction of rent under this sub-section.

Sub-section (2), clause (c). Rulings under the former law.—The defendant having for more than sixty years occupied lands in excess of the number of bighas specified in his *pattah*, and the lands in question having always been deemed to form part of what was covered by the *pattah*, it was held that they had been occupied and enjoyed as the land included in the *pattah* since before the Decennial Settlement, and that the rent therefore could not be enhanced (*Junaki Ballabh Chakravarti v. Nabin Chandra Rai*, 2 W. R., Act X, 33; *Indra Bhushan Deb v. Golak Chandra Chakravarti*, 12 W. R., 350; *Farquharson v. Government of Bengal*, 16 W. R., P. C., 29).

Sub-section (2), clause (d). Ruling under the former law.—It cannot be said that because of some difference in the length of the measuring pole in use at different periods the area of the land has been altered (*Baban Mandal v. Shih Kumari Rarmani*, 21 W. R., 404).

Sub-section (4).—The rule prescribed in this sub-section is the same as that laid down in *Brajanath Pal v. Hira Lal Pal*, (1 B. L. R., A. C., 87; 10 W. R., 120). In order to bring a case within the first alternative mentioned in sec. 52 (4), it is to be shown in the first place what the yearly value of the tenure is. It is next to be shown what is the diminution of the total yearly value of the tenure, and in order to calculate the diminution, the Court must find out the yearly value of the land lost (*Kanai Lal Khan v. Midnapur Zamindari Co.*, 5 C. L. J., 48n).

Sub-section (5).—This sub-section was added to section 52 by the Bengal Tenancy (Amendment) Act III, B. C., of 1898, which was

extended to Orissa by Not., Nov. 5th, 1898. In the statement of Objects and Reasons prefixed to the Bill of 1897 to amend the Tenancy Act, the necessity for the addition of this sub-section was explained as follows :—

“It has been held by some Special Judges, interpreting a decision of the High Court (1) that when additional rent is claimed on the ground of excess area, the landlord must indicate the precise plots or pieces of land acquired by the tenant in excess of the original holding, while section 52 itself does not provide for the assessment to rent of excess lands, where there are no rates for lands of a similar description in the vicinity but lump rentals. The section, as amended, indicates that it should not be always necessary, in order to prove excess area, to point out the particular plots that were acquired since the original letting, and provides a rule for assessment of such excess areas, when proved. When the original letting was at so much a bigha, and it is shown by measurement by the same standard and under the same conditions that the tenant is holding a larger number of bighas than he is paying rent for, it should not be necessary for the landlord to point out the particular plots which the tenant has acquired in excess of the original area comprised in his holding.”

Sub-section (6).—This sub-section has been added by Act I, B. C., of 1907. In the Notes on Clauses to the Bill, which afterwards became Act I, B. C., of 1907, it is said :

“The law, as it stands at present, contains no provision for the proof of excess area, otherwise than by evidence of its specific existence in each case, and the decisions of the Courts have not always been in accordance with the intentions of the framers of the Amendment Act of 1898, who, by adding sub-section (5) to section 52, by implication suggested that excess area may be assessed to rent, even if the landlord is unable to indicate any particular land as held in excess. The proposed modification of section 52 will allow the custom of settlement on measurement to be taken as a presumption that the area of a tenure or holding mentioned in the landlord's papers has been ascertained by actual measurement, and thus make it easier for the landlords to prove the existence of excess area.”

The Select Committee explained the changes they made in this sub-section as follows :—

“The clause as originally drafted required the landlord or tenant to prove that a custom of measurement existed in the village in order to have the presumption applied that any entry of area had been made after measurement. It has been represented, we think rightly, that it would be very difficult to prove a custom of measurement; and also that what is really relevant is not a general custom, but a usage existing at the time the measurement on which the claim is based was made. We are also of opinion that the village is not a suitable unit for this matter. A village may contain

(1) *Gueri Patra v. Raha*, 20 Cal., 579.

several estates or permanent tenures, *and the practice of the different landlords in regard to measurement may not be identical. There is no reason therefore why the same presumption should apply to all. We consider that the unit should be the estate, permanent tenure or part thereof, in which the holding concerned is situated. We are also of opinion that the presumption should only arise in respect of an area entered in a rent-roll, if it is supported by a corresponding entry in a counterfoil receipt, from which it may be inferred that the tenant knew of and accepted the description of the area of his holding adopted by the landlord. The changes, which we propose in the clause, give effect to these views."

A suit under this section cannot proceed at the instance of fractional co-sharers—A suit for additional rent on the ground of excess land found in the possession of a raiyat must in consequence of the provisions of section 188 of this Act be brought by all the joint landlords and cannot proceed at the instance of some of the fractional shareholders (*Gopal Chandra Das v. Umesh Narain Chaudhri*, 17 Calc., 695). But the provisions of section 188 are not applicable to a case in which one co-sharer sues for arrears of the rent payable under a *kabulyat* for land left unassessed at the time of the original letting on the ground of its being unculturable, but which had subsequently become fit for cultivation, and in which *kabulyat* the rent payable for this land on its becoming fit for cultivation had been fixed; for such a suit is not one under this section but one upon the original contract of letting (*Ram Chandra Chakravarti v. Giridhar Datta*, 19 Calc., 755). A *kabulyat* executed by the holder of a *dar-maurasi patta* in favour of his immediate landlord, a *mukararidar*, provided that the former should have his name entered in the *zamindar's serishtah*, in place of the *mukararidar's* and pay rent direct to the *zamindar*, and in case the area of the tenure should exceed certain bighas, he should pay rent on each excess bigha to the *mukararidar* and the *zamindar* respectively. The agreement was satisfied by the *zamindar*: *held*, that though the *mukararidar* and the *zamindar* were both landlords of the *dar-maurasidar*, they were not joint landlords under section 188 (*Matangini Dasi v. Ram Das Mallik*, 7 C. W. N., 94). Where a co-sharer landlord sues for arrears of rent and additional rent on a *kabulyat* in which the right of the plaintiff to certain rent, and his right to additional rent for excess area were admitted, and the right of the plaintiff and the liability of the defendant were set out without any reference to the right of any other co-sharer; *held*, that such a suit was maintainable, although the plaintiff's co-sharer was not made a party (*Govind Chandra Pal v. Hamidulla Bhuiyan*, 7 C. W. N., 670).

There is no defect in such a suit, when the whole of the rent is sued for, and all the non-joining co-sharer landlords are made parties defendants

(*Din Tarini Dasi v. Broughton*, 3 C. W. N., 225). A fractional shareholder of a tenure has no right to grant abatement of rent in respect of a holding within the tenure independently of his other co-sharer (*Syama Charan Mandal v. Saim Mollah*, 1 C. W. N., 415; *Bhupendra Narain Datta v. Raman Krishna Datta*, 27 Calc., 417 : 4 C. W. N., 107.) When the lands for which rent is claimed were no part of the original holding, formed subsequently to its creation and are outside its boundaries, they constitute a new holding, and the right to claim such rent is a right inseparable from the landlord's position as proprietor of the lands and exists independently of sec. 52. Section 188 is, therefore, no bar to a suit brought by a co-sharer landlord for the recovery of his share of the encroached lands, or for the assessment of rent on them. But the case is different when a co-sharer landlord claims *khas* possession with an alternative claim for rent, not merely of the additional land found in the possession of the tenant, but for the entire quantity of land found in his possession, including the lands of the old holding. Such a suit is within the scope of section 52, and is barred by the provisions of sec. 188 (*Abdul Hamid v. Mohini Kant Saha*, 4 C. W. N., 508).

Court fees.—Under sec. 7, sub-sec. 11, Act VII of 1870, in a suit (1) to enhance the rent of a raiyat having a right of occupancy and (2) for abatement of rent, the amount of fee payable under the Act shall be computed according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Payment of Rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Payment of rent.
Instalments of rent.

Former law.—Under the former law (sec. 20, Act X of 1859 and sec. 21, Act VIII, B. C., of 1869) instalments of rent were payable according to the *puttah* or engagement, or if there was no written specification of the time of payment, according to "established usage," and these words referred to the established usage in the pargana and not to the established usage between the parties (*Chaitanya Chandra Rai v. Kedar Nath Rai*, 14 W. R., 99.) When the *kabulyat* stipulated that payment should be made in monthly *kists*, the raiyat was bound by its terms, notwithstanding that the landlord had previously not enforced

them strictly (*Piari Mohan Mukhurji v. Braja Mohan Basu*, 21 W. R., 36 : 22 W. R., 428).

Present law.—A decision under the old law by which payment annually was decreed is no evidence of an “agreement” between the parties, and the words “established usage” in the section refer, not to a practice previously prevailing between the parties, but to the established usage of the pargana, in which the property is situated (*Hira Lal Das v. Mathura Mohan Rai Chaudhri*, 15 Cal., 714). This decision was followed, as to the meaning to be attached to the words “established usage” in this section, in *Watson v. Shrikrishna Bhunik*, (21 Cal., 132). When an instalment of rent falls due after the date on which the sale of a holding is confirmed, the purchaser is liable for the whole of the instalment, though he may have had possession for only a part of the period in respect of which the instalment is due ; for rent is ordinarily to be regarded, not as accruing from day to day but as falling due only at stated intervals according to the contract of tenancy, or, in the absence of such contract, according to the general law as laid down in this section (*Satyendro Nath Thakur v. Nil Kanth Singh*, 21 Cal., 383). When a landlord has brought a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of the confirmation of the sale, and the arrears accruing due between the date of sale and the date of confirmation of sale must be treated as arrears of rent payable by the out-going tenant, whose interest does not cease till the sale is confirmed (*Karunami Banurji v. Surendra Nath Mukhurji*, 2 C. W. N., cccxxvii).

In sec. 3 (5) it is provided, that “in secs. 53 to 68, both inclusive, rent includes also money recoverable under any enactment for the time being in force as if it was rent.” Hence, sums payable under the Cess Act (IX of 1880, B. C.), the Survey Act (V, B. C., of 1875), and the other Acts mentioned in the note at pp. 30 and 31 are, subject to agreement, established usage, or statutory enactment, payable in four quarterly instalments.

Produce rents.—This section applies to money rents only. Produce rents would, therefore, seem to be payable according to agreement between the parties or established usage.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

Time and place
for payment of
rent.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent,

be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord :

Provided that the Local Government may, from time to time, make rules either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

Extended to Orissa, (Not., Sept. 10th, 1891).

Sub-section (1)—Under the old law in *Kashi Kant Bhattacharji v. Rohini Kant Bhattacharji*, '6 Calc., 325', it was held by a Full Bench that "rent becomes due at the last moment of the time which is allowed to the tenant for payment." An instalment not paid up to sunset of the last day for payment becomes an arrear (*Iswardhari Sing v. Rambrick Roy*, 7 C. L. J., 106).

Sub-section (2). It is for a debtor to pay his debts due at a fixed time ; and when a debtor pleads tender of payment as a ground for not being saddled with interest, it is for him to prove such tender (*Sarat Sundari Debi v. Collector of Mymensingh*, 5 W. R., Act X, 69). As soon as a valid tender is proved, it will stop the running of interest even if no deposit has been made under sec. 61 and the tender is kept good if the money is kept ready for payment on demand (*Kripa Sindhu Mukerjee v. Annada Sundari*, 35 Calc., 34 : 11 C. W. N., 983 : 6 C. L. J., 273 F. B.) A tenant's liability to pay rent remains, notwithstanding that the landlord has no village office and has not appointed a convenient place for payment. When there is no controlling agreement, the tenant must go to his landlord and pay the rent to him as it falls due. Rent not so paid carries interest under sec. 67 (*Fakir Lal Goswami v. W. C. Banerji*, 4 C. W. N., 324).

Sub-section (2). Proviso.—By a resolution, dated the 19th March, 1891, published in the *Calcutta Gazette* of the 25th March, 1891, Part I, p. 287, the Local Government under s. 54 (2) of this Act directed that from the 1st July, 1891, payment of rent by means of money order would be authorized in all the districts of Bengal in which the Bengal Tenancy Act is in force. See note to sec. 56, p. 200, as to forms of receipt for rent paid by money order.

Sub-section (3). When rent is duly paid.—Payment of rent to one of several joint proprietors is payment to all (*Udit Narain Singh v. Hudson*, 2 W. R., Act X, 15; *Muktakeshi Dasi v. Kailash Chandra Mitra*, 7 W. R., 493). Payment by tenant under the landlord's directions to another or for a specified purpose of a sum equivalent to the amount claimed as rent is tantamount to a payment to the landlord himself, and is a sufficient answer to the landlord's suit for rent (*Jai Kumar v. Furlong*, W. R., Sp. No., 1864. Act X, 112). Where a tenant is left in that condition in which he is compelled to pay his landlord's debt to save his security from forfeiture, the circumstances constitute a sufficient authority to make the payment of Government revenue to save the estate from sale (*Hills v. Umamai Barmani*, 15 W. R., 545. See section 170 (3) of this Act). An auction-purchaser with notice of a payment in advance made by the tenant to the former proprietors of rent due for a period subsequent to the date of purchase is bound by such payment (*Ram Lal Shaha v. Jogendra Narain Rai*, 18 W. R., 328; *Madan Mohan Lal v. Holloway*, 12 Cal., 555). But in a suit to recover contribution, on the allegation that plaintiff and defendant were joint tenants and that there was an arrear of rent due from them for which the *zamindar* was about to sue, when plaintiff paid it with other cesses and expenses, it was held that as there had been no demand or any suit or other effectual proceeding for the recovery of the rent, the payment by the plaintiff was voluntary and officious, and that as the demand with which the plaintiff complied was an excessive demand, his compliance with it would not bind the defendant to pay the amount of contribution sued for (*Lakhi Kant Das v. Sib Chandra Chakravarti*, 12 W. R., 462).

Sub-section (3). Produce rents.—If a produce rent is not paid, a suit for the money value of the produce at the time when it ought to have been paid, will lie as a suit for arrears of rent (*Krishna Bandhu Bhattacharji v. Rotish Sheik*, 25 W. R., 307). A suit for produce rent or its money value is a suit for rent under the Bengal Tenancy Act and not a suit for damages for breach of contract, and therefore, is not cognizable by a Provincial Small Cause Court (*Shoma Mehta v. Rajani Biswas*, 1 C. W. N., 55). See note at p. 27.

Sub-section (3). An arrear of rent.—Under sec. 67 an arrear of rent shall bear simple interest at the rate of $12\frac{1}{2}$ p. c., per annum from the expiration of the quarter in which the instalment falls due, and under sec. 147, suits for arrears of rent cannot be brought more frequently than at intervals of three months. But rent which is tendered to the proper person in proper time is not an arrear within the meaning of sub-section 3, the term "arrear" involves the existence of some default on the part of the debtor. (*Kripasindhu v. Annada Sundari*, 35 Cal., 34. 6 C. L. J., 273; 11 C. W. N., 983, F. B.,

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Extended to Orissa, (Not., Sept., 10th, 1891).

Appropriation of payments.—The provisions of this section are founded on those of sections 59 and 60 of the Contract Act (IX of 1872). Section 59 provides that when a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the payment of a particular debt, the payment, if accepted, must be applied accordingly. Section 60 provides that when the debtor has omitted to intimate, and there are no circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Under the present Act it has been held that it was open to a Court which has to deal with the facts of a case to say whether, taking receipts which extended over a number of years together, and having regard to the fact that they did not specify the years to which the amounts related, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years (*Surjo Kant Acharyji v. Baneshwar Shah*, 24 Cal., 251). Under the Indian Contract Act, 1872, as well as the ordinary rules of law, when neither the debtor nor any circumstances indicate to which of several debts, a payment is to be applied, the creditor may apply it at his discretion to any debt actually due and payable to him from the debtor (*Rameswar Koer v. Mohdi Hossain Khan*, 26 Cal., 39; L. R., 25 L. A., 179). The word "rent" does not necessarily include interest: so if any sum of money be paid by a tenant to a landlord as rent, and the latter receives it as such, he cannot be permitted to apply that money towards any interest which may then be due (*Bhagabati Debya Chaudhurani v. Basanti Kumar Debi*, 11 C. W. N., 110; 5 C. L. J., 69). See note p. 33. Sec. 55 of the Bengal Tenancy Act differs from sec. 59 of the Contract Act. Under sec. 55 the

debtor must declare the year or the instalment for which he pays, failing which the landlord is at liberty to appropriate the payment as he pleases. If by an arrangement the tenant pays a part of the Govt. revenue for his landlord, there is no appropriation within sec. 55 of that amount to the payment of rent for that year (*Mohimchandra Roy v. Kalitara Debya*, 11 C. W. N., 939).

Rulings under the former law.—The payments in each year must be presumed to be for the current year and surplus payments to be for past not subsequent years, but payments cannot be credited to previous arrears beyond the term of limitation (*Taramani Dasi v. Kali Charan Sarma*, W. R., Sp. No., Act X, 1864, 14). A general payment in one year without proof that it was in satisfaction of the rents of that year may be applied in satisfaction of the arrears of the previous year (*Ahmuly v. Brodie*, W. R., Sp. No., Act X, 1864, 15). A payment for rent should be credited to the oldest arrears first, and not to current rents, unless so specifically stated by the party making it (*Sarnamayi v. Singhrup*, W. R., Sp. No., Act X., 134). If a raiyat shows payment of rent for 1265 and 1266, it is to be presumed that all previous claims have been satisfied. To entitle the landlord to carry to the credit of 1264 any of the payments made in 1266, he must show that at the close of 1264 there was an arrear due to him (*Sarat Sundari Debi v. Brodie*, 1 W. R., 274). An acknowledgment of the plaintiff in a former case of having realized a certain sum of money on account of rent for three years may afford some presumption that the older items in the account were satisfied, and if that presumption could not be rebutted, it might be an answer to an action on the older demand (*Anayat Hossain v. Didar Baksh*, W. R., Sp. No. 1864, Act X, 97, but see *contra*, *Mitrajit Singh v. Chokar Narain Singh*, 2 W. R., 58). In a suit by a landlord against his tenant for arrears of rent due for a portion of the year 1283, the defendant pleaded payment and called as his witness the plaintiff's agent, who admitted the receipt of certain payments from the defendant's under-tenants during the time for which the arrears were demanded; but swore they were payments made in respect of arrears due on account of previous years, and it was held that the defendant, having pleaded payment, was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which the arrears were claimed (*Saifan v. Rudro Sahai*, 7 Calc., 582).

Receipts and accounts.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt.

(2) The land lord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment :

Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Extended to Orissa, (Not., Sept. 10th., 1891), and to the Sonthal Pargans (Not., Mar., 1st, 1904).

Sub-section (1) Receipts granted under this sub-section must, if there are more landlords than one, be signed by all of them, or by an agent authorized to act on behalf of all of them (sec. 188). This authority may be given either verbally or in writing. If the receipt is signed by an agent on behalf of only one landlord, then, it must be signed by an agent authorized in writing to grant receipts on his behalf [sec. 187 (3)] (*Gopinath Chakravarti v. Umakanth Das Rai*, 24 Cal., 169). Under cl. (c), art. 15 of Sch. II of Act I of 1879, receipts granted for any payment of rent by a cultivator on account of land assessed to Government revenue are exempt from stamp duty. Receipts granted to cultivators by owners of revenue free property, if for sums exceeding Rs. 20, should, therefore, be stamped under art. 52 of schedule I of the

Stamp Act. This section entitles every tenant to a receipt on payment of any rent (*Narendra Chandra Lahiry v. Asmatulla*, 1 C. W. N., xix).

Sub-section (3). Proviso.—The Local Government has sanctioned special forms of rent receipts under this sub-section, (1) for certain areas under settlement in the Rajshaye district (Not., dated 30th January, 1888, *Calcutta Gazette*, February 1st, 1888, Part I, p. 83) ; (2) for landlords receiving rent by money-orders, a separate receipt being given for each holding (Resolution, dated 8th May, 1890, *Calcutta Gazette*, May, 8th, 1890, Part I, p. 452). (For forms of receipt see *Calcutta Gazette*, May, 8th, 1890, Part I, p. 453, and *Calcutta Gazette*, July, 24th, 1889, Part I, p. 650) ; (3) for use in the Orissa division (Not., 378 L. R. dated 22nd January, 1894, *Calcutta Gazette*, January 24th, 1894, Part I, p. 84) ; (4) for use in the Western Duars of the Jalpaiguri district (Not., 872 T. R., dated 10th October, 1899, *Calcutta Gazette*, November 1st 1899, Part I, p. 1899) ; (5) for use in the Sonthal Parganas (Not., dated 1st March, 1904, *Calcutta Gazette*, March, 2nd, 1904 ; Part I, pp. 347-349) ; (6) for use in certain Government and Encumbered estates in the districts of Hazaribagh, Ranchi and Singhbhum (Not., dated 23rd March, 1905, *Calcutta Gazette*, March 29th, 1905, Part I, p. 536) ; (7) for use in certain portions of the Chota Nagpur Division, except Manbhum (Not., dated 23rd March, 1905, *Calcutta Gazette*, March 29th, 1905, Part I, p. 539 ; Not., dated 21st June, 1905, *Calcutta Gazette*, June 28th 1905, Part I, p. 1150) ; (8) for use in the Government estate in the district of Palamau, and in the Kolhan Government estate and the Chaibasa town Khas Mahal in the district of Singhbhum (Not., dated 23rd March, 1905, *Calcutta Gazette*, March 29th, 1905, Part I, p. 541) ; and (9) for use in the estate of Bara Lal Nawal Kishore Nath Sah Deo of Palkote in the district of Ranchi (Not., dated 9th June, 1905, *Calcutta Gazette*, June, 14th, 1905, Part I, p. 1686..

Sub-section (4).—When there are several joint landlords and a receipt has been given by only one of them, it is necessary for the Court before giving effect to the presumption arising under sec. 56, clause (4) to find affirmatively that the person by whom the receipt was signed was authorized by them all, either verbally or in writing, to grant it (*Gopinath Chakravarti v. Umakanth Das Rai*, 24 Cal., 169).

Receipts how to be proved. Rent receipts should, as a general rule, be attested or proved by some oral evidence. But the tenant cannot be expected in every case to summon all the *gomastars* of his *zamindar* for the past twenty or thirty years to attest his *dakhilas*. He should be required in his examination to attest the *dakhilas* himself, as far as he can. All *dakhilas* which have been given to him personally, he can prove as well as any other witness (*Rajeshari Debi v. Shahnath*

Chaturji, 4 W. R., Act X, 42; *Raj Mahomed v. Banu Rasma*, 12 W. R., 34; *Madhab Chandra Chaudhri v. Promotho Nath Rai*, 20 W. R., 264; *Surjo Kanth Acharji v. Baneshar Shaha*, 24 Calc., 251). Some evidence of their genuineness must be given (*Dumaine v. Utam Singh*, 13 W. R., 462; *Lachmipat Singh v. Jangali Kalyan Das*, 9 W. R., 147), even if they are not positively denied (*Ramjodu Ganguli v. Lakhi Narain Mandal*, 8 W. R., 488; *Krittibas Mahanti v. Ramdhan Kharah*, 7 W. R., 526; B. L. R., Sup. Vol., 658; *Bharat Rai v. Ganga Narain Mahapatro*, 14 W. R., 211, and *contra*, *Govind Karmokar v. Kumud Nath Bhattacharji*, 3 W. R., Act X, 148). But they may be accepted by a Court as undisputed documents, if the opposite party says he is not prepared to deny their genuineness (*Indra Bhushan Deb v. Golak Chandra Chakravartti*, 12 W. R., 350). Some evidence of the handwriting of the parties who gave them should be given, or some satisfactory account of the custody from which they came (*Umesh Chandra Mukhurji v. Bama Dasi*, 7 W. R., 15). But it is not necessary for a party who desires to prove a rent receipt to call the writer of it, if alive, as a witness, so long as he can give other satisfactory proof of it (*Ganga Narain Das v. Saroda Mohan Rai*, 12 W. R., 30; 3 B. L. R., A. C., 230). Unattested *dakhilas* are not evidence of payment of rent (*Udint Zuman v. Mohiudin Ahmad*, 9 W. R., 241; *Lachmipat Singh Dugar v. Uma Nath Mandal*, 10 W. R., 490; *Reazunnissa v. Boku Chaudhrai*, 12 W. R., 267). Where a party filing *dakhilas* deposed that the amounts of rent he had paid were according to the sums entered in the *dakhilas*, such statement was held not to prove the *dakhilas*, being merely a deposition to the fact of a certain payment of rent, and not to the authenticity of the documents filed (*Kailash Nath Haldar v. Umri Nath Rai Haldar*, 11 W. R., 170). Receipts signed by the landlord's agent, if shown to be authentic, are *prima facie* evidence of payment of rent, but not conclusive evidence (*Amir Baksh v. Yusuf Ali*, 22 W. R., 489).

Effect of receipt of rent by reversioner. The grant of a *patni* lease by a Hindu widow is not void but voidable, and the receipt of rent by the reversioner from the *patnidar* amounts to an election to treat the lease as valid. To prove that the receipt ought not to have that effect, the reversioner must adduce evidence on that point (*Madhu Sudan Singh v. Rooke*, 1 C. W. N., 433; 25 Calc., 1; L. R., 24 L. A., 164).

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from

Tenant entitled to full discharge or statement of account at close of year.

the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Extended to Orissa, (Not., Sept., 10th, 1891).

By a notification, No. 377, L. R., dated 22nd January, 1894, published in the *Calcutta Gazette* of the 24th January, 1894, Part I., p. 83, the Local Government has under sub-section (2) prescribed a modified form of account for use in the Orissa division.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

Penalties and fines for withholding receipts and statements of account and failing to keep counterparts.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account

for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

Extended to Orissa, (Not., Sept, 10th, 1891). Sub-section (1) has been extended to the Sonthal Parganas (Not., March, 1st 1904).

The sub-sections, (3) to (8) in brackets which follow, have been substituted for the old sub-sections (3) and added to the section by Act I, B. C., of 1907, and for Eastern Bengal and Assam by Act I, E. B. C., of 1908.

[(3) If a landlord or his agent without reasonable cause fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3) either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his

order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the orders passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section, the Collector shall have power to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure.]

Sub-section (1).—The operation of section 58 is not limited to the case when the payment has been made by the registered tenant. When a landlord receives rent from a person whose name has not been registered, and thus recognizes him as his tenant, he renders himself liable to the penalty provided for in sec. 58, if he refuses to deliver a receipt without reasonable cause (*Narendra Chundra Lahiri v. Asmatulla*, 1 C. W. N., xix).

Sub-section (3).—A Magistrate has jurisdiction to try a landlord for an act specified in s. 58 (3) in the same way as he would try a summons case (*Emperor v. Ram Das*, 9 C. W. N., 816).

The old sub-section (3) was :—If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Extended to Orissa, (Not., Sept., 10th, 1891), and to the Sonthal Parganas (Not., March, 1st, 1904).

New sub-sections (3) to (8). The object of these new sub-sections is explained in the Notes on Clauses of the Bill as follows :

"The provisions of the Tenancy Act regarding the issue of proper rent-receipt by landlords are very generally disregarded in certain parts of the province. It is considered necessary to take more active measure to enforce them. At present, the provisions of section 58 can only be set in motion on the complaint of the tenant and are practically inoperative. It is proposed, therefore, to give the Collector power to take action on reports received from Revenue or Judicial officers, who will be required to bring to the Collector's notice any breaches of the law which come to their knowledge. The power to require payment of compensation to the landlord will, it is hoped, to a large extent debar the bringing of false and vexatious complaints. In cases where the complaint is substantiated, the Collector should be empowered to award compensation to the tenant on the same scale as is provided in section 58 (1) and (2), and where compensation is so awarded by the Collector, the tenant should not be allowed to sue the landlord in the Civil Court for any penalty. It is inadvisable that tenants should be able to obtain damages in two different Courts; the amendments proposed will be sufficient to safeguard their rights and to secure obedience to the law."

In the report of the Select Committee on the Bill it is said :—

"We have modified considerably the changes which it was proposed in the Bill to introduce into section 58 of the Act. The terms used in the sub-sections as drafted would practically render the failure to give a receipt a criminal offence, and this is generally objected to by the associations of landlords consulted. We have, therefore, removed the cause of objection by substituting a form of procedure closely akin to that prescribed by section 52 of the Bengal Survey Act, 1875, for the imposition of penalties, and by the Public Demands Recovery Act, 1895, for their recovery. The tenant must first prove that he received no receipt, and we do not consider it necessary to make any specific provision as to the burden of proof. We have struck out of the clause the provisions as to compensation to tenants. We fear that the prospect of this compensation would be a temptation to bring false cases. Further, we think that the provision requiring judicial officers to report cases of failure to grant receipts would be generally disregarded, while the report by Revenue officers can best be prescribed by executive order. We have, therefore, omitted the last portion of the proposed sub-section (4), and in the same sub-section have proposed a time-limit within which information may be laid or complaint made. We consider that the Board of Revenue should have power to revise any order under the section, and have made provision for this."

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

Local Government to prepare forms of receipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Extended to Orissa, (Not., Sept., 10th, 1891).

The use of the Government forms of receipt is not obligatory (Government letter, No. 1542, T. R., dated 7th September, 1885, published in the supplement to the *Calcutta Gazette* of the 16th Sept., 1885, p. 1648).

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor, manager or mortgagee.

VII (B. C.) of 1876.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Extended to Orissa, (Not., Sept., 10th, 1891).

Land Registration Act and rulings under it.—Section 78, Act VII of 1876 (B. C.), prescribes that “no person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act; and no person, being liable to pay rent to two or more such proprietors,

managers or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager or mortgagee is registered bears to the entire estate or revenue-free property." Section 76 is to the effect that "the receipt of any proprietor, manager or mortgagee, whose name and the extent of whose interest is registered under this Act, shall afford full indemnity to any person paying rent to such proprietor, manager or mortgagee." Section 81 of the same Act, however, makes the provisions of these sections subject to "the conditions of any written contract" and to the right of "any person deeming himself to be entitled to any sum of money to recover such sum by due process of law from any other person who has received the same." Before the passing of the Tenancy Act, it was held that registration under Bengal Act VII of 1876 is not only not conclusive proof, but no evidence at all, upon the question of the title of a proprietor so registered, and that such registration does not relieve a plaintiff from proving his title to land claimed by him (*Ram Bhushan Mahto v. Jehli Mahto*, 8 Cal., 853). Further, entries made under Bengal Act VII of 1876 by the Collector recording the names of proprietors of revenue paying estates are not evidence under sec. 35 of the Evidence Act of the fact of proprietorship (*Saraswati Dasi v. Dhanpat Singh*, 9 Cal., 431; 12 C. L. R., 12); and the mere fact of a person being registered under the provisions of Bengal Act VII of 1876 as proprietor of land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it (*Ram Krishna Das v. Hurain*, 9 Cal., 517; 12 C. L. R., 141).

The present law. The provisions of this section are more stringent than those of the Land Registration Act. No person claiming as a proprietor can recover rent from a tenant unless his name has been registered under the Land Registration Act. It is immaterial how the transfer of proprietorship has been effected, whether it is a case of transfer by purchase or a case of transfer by succession. Every person succeeding to the proprietary right in any estate must apply for registration of his name (*Panik Lal Mondar v. Thakur Prasad Singh*, 25 Cal., 717). It is enough for a proprietor to be registered in one district. If part of his estate is transferred to another district, his suit for rent should not be dismissed because his name has not been registered in that district also (*Surendra Narain Singh v. Jai Nath Das*, 1 C. W. N., civ). When a number of tenants collect rent jointly, the fact that one of them alone has got his name registered under the Land Registration Act in respect of his share does not entitle him to recover his share of the rent separately (*Rampad Singh v. Ramdas Pandey*, 1 C. W. N., civ). The second

clause of the section practically precludes a defendant from impugning the title of a proprietor, manager or mortgagee, whose name has been registered as such under the Land Registration Act. It would seem that he cannot do so, even if he pays into Court the amount admitted to be due under the provisions of sec. 149 of this Act. It has, therefore, been held that a tenant cannot deny the right of a registered proprietor to distrain, and plead payment of rent to a third person whose name is not registered (*Hanuman Ahir v. Govinda Kuar*, 1 C. W. N., 318). So, too, he cannot, as a defence to a suit by a registered proprietor for rent, plead that the rent is due to a mortgagee to whom the landlord has assigned a part of his interest, but whose name has not been registered (*Hem Chandra Misri v. Sourindro Mohan Tagore*, 5 C. W. N., 482). However, in one case, *Durga Das Hazra v. Samash Akon*, (4 C. W. N., 606), it has been ruled that when a tenant in good faith and under the reasonable belief that the land held by him was included in the estate of a third person, attorned to him four years prior to the suit, this had the effect of dispossessing the plaintiff and of rendering the provisions of this section inapplicable; so that the tenant was not estopped from pleading that the rent was due to a third person, notwithstanding that the plaintiff was the registered proprietor. But it is only the registered proprietor who can claim the benefit of this section. His lessee cannot (*Mahomed Mazhar v. Kudin*, 11 C. W. N., cxxviii). A tenant cannot plead as a defence to a claim for rent that it is due to a mortgagee to whom the landlord has assigned a part of his interest, but whose name has not been registered (*Hem Chandra Misri v. Sourindro Mohan Tagore*, 5 C. W. N., 482.) In a suit brought for rent by a registered proprietor, the defendant cannot plead that the plaintiff is a *benamdar* (*Sadhu Charan Pal v. Rudhika Mohan Rai*, 8 C. W. N., 695). But Sec. 60 does not preclude the tenant from proving that the title under which the landlord was registered has been found to be void by a competent court and if proved, this would be a good defence to the suit (*Girischandra Chongdar v. Satischandra Sarkar* 12 C. W. N., 622).

Registration when required.—A person appointed to be manager of an estate under section 95 of this Act must have his name registered under the provisions of the Land Registration Act, before he can recover rent from the tenants of the estate of which he has been appointed manager (*Makbul Ali Chaudhri v. Girish Chandra Kundu*, 22 Calc., 634). So also must a person who is an administrator and as such the representative of a deceased proprietor of an estate, and legal owner of his property (*McIntosh v. Jharu Mollah*, 22 Calc., 454).

When not required.—A Receiver appointed by a Court and suing as such to get in arrears which accrued during the life-time of a

deceased registered proprietor is not required to be registered before being entitled to sue (*Belchambers v. Hussan Ali Mirza*, 2 C. W. N., 493). When a mortgagee had got his name registered as such under sec. 44 of the Land Registration Act and sued for rent, alleging that the right of redemption of the mortgagor had been extinguished by limitation, it was pleaded that in these circumstances the plaintiff was not entitled to sue, as he had not registered his name as proprietor. But it was held he was entitled to sue as mortgagee till the fact of the redemption of the mortgage was noted in the General Register under sec. 26 of the Act, and that so long as his name continued on the register, a receipt granted by the mortgagor proprietor did not operate as a valid discharge under sec. 78 of the Land Registration Act or sec. 60 of the Tenancy Act (*Sundar Das v. Charitter Rai*, 1 C. W. N., clxiii). In a suit for enhancement brought by a *zar-i-peshgi thikadar* on the ground that the defendant paid at a rate lower than the prevailing rent, it was held that the suit was for the declaration of enhanced rates payable in future, and was therefore not affected by the provisions of this section or of sec 78, Act VII, B. C., of 1876 (*Mangni Ram v. Seo Charan Munder*, 1 C. W. N., clxxix).

A suit for rent accruing due partly during the lifetime of a registered proprietor and partly after his death was brought by his representatives ; the defence was that the suit was not maintainable, as the plaintiffs were not registered proprietors and had no certificate under the Succession Certificate Act. *Held*, that sec. 78 of the Land Registration Act is not a bar to the realization of rent accruing due during the lifetime of the registered proprietor, but a suit for rent accruing due after the death of the registered proprietor is not maintainable by his representatives, without having their names registered under the Land Registration Act. *Held*, also, that rent is not a "debt" within the meaning of sec. 4 of the Succession Certificate Act, and, therefore, no succession certificate is necessary (*Nagendra Nath Basu v. Satodal Basini Basu*, 26 Calc., 536 : 3 C. W. N., 294. See also *Pramada Sundari Debi v. Kanai Lal Saha*, 27 Calc., 178).

The provisions of this section and those of section 78 of the Land Registration Act do not apply to a *patnidar*, and when a *zamindar* purchases a *patni*, the *patni* interest does not merge in the proprietary interest so as to make these provisions applicable (*Jibanti Nath Khan v. Gokul Chandra Chaudhri*, 19 Calc., 760). A *patnidar* or an *ijaradar* is not proprietor of an interest in an estate within the meaning of the Land Registration Act. It is not necessary, therefore, for a *patnidar* or *ijaradar* to register his name under the Act to entitle him to sue for rent (*Sukurulla Kazi v. Bama Sundri Dasi*, 24 Calc., 404). So also in the

case of the lessee of the registered proprietor (*Mahomed Musahar v. Alla Bawa*, 3 C. L. J., 93 n), or to the assignee of a proprietor whose name has not been registered (*Sarafat Hossain v. Tarini Prasad Dobey*, 11 C. W. N., 141). But see *Hem Chandra Misri v. Sourindra Mohan Tagore* 5 C. W. N., 482). Sec. 42 of the Act has no application to the case of a co-sharer who by an amicable arrangement with the other co-sharers has been placed in possession of a larger than his registered share in some mouzahs, or of a less share or of no share in others. When the total interest which he holds in all the mouzahs represents his registered interest in the whole estate, and when the raiyats have acquiesced in the arrangement and paid rents in accordance therewith for several years prior to the period for which rents in the suit are claimed, *held*, that they cannot rely on sec. 78 to dispute the landlord's right to recover rent in accordance with that arrangement (*Parash Muni Dasya v. Natho Kishor Lahiri*, 8 C. W. N., 193).

Registration before decree sufficient.—It was at first held that a tenant is not bound to pay rent to a person merely claiming as proprietor, and that such a person cannot sue the tenant for rent unless his name has been actually registered under Act VII, B. C., of 1876. A mere application to be registered, it was said, is not sufficient for the purpose, and the registration must have been effected before the filing of the suit. Registration before the pendency of the suit is necessary and registration before the decree, if made, is of no avail (*Sujan Kanth Achurji v. Hemanta Kumari Devi*, 16 Calc., 706; *Dharamidhar Sen v. Wajidunnissa*, 16 Calc., 708). But the matter was reconsidered in the case of *Alimuddin Khan v. Hira Lal Sen* (23 Calc., 87), in which the plaintiff sued the defendants in the Calcutta Small Cause Court for arrears of rent of certain premises in Calcutta without having previously caused his name to be registered under Bengal Act VII of 1876, but at the first hearing he produced the certificate of registration which he had obtained since bringing the suit. The case was ultimately referred to a Full Bench, to which two questions were propounded *viz.*, (1) whether the suit as brought by the plaintiff, an unregistered proprietor should be dismissed, or whether a certificate of the plaintiff having been registered as proprietor under the Land Registration Act having been produced when the suit came on for trial, the trial could proceed; (2) was the case of *Dharamidhar Sen v. Wajidunnissa*, 16 Calc., 708 rightly decided? It was held by a majority of the Bench that the certificate of registration having been produced when the suit came on for trial, the trial could proceed. The Bench differed as to the second question, Petheram C. J., and Beverley, J., who were in the minority, holding that the case of *Dharamidhar Sen v. Wajidunnissa* had been rightly

decided, Norris, J., that it had been wrongly decided and Prinsep and Ghosh, JJ., holding that the case being a mofussil case governed by and possibly decided with regard to the Bengal Tenancy Act, the question whether it was or was not rightly decided had no bearing on a case like the present brought in the Calcutta Small Cause Court and relating to property in Calcutta, where the Bengal Tenancy Act was not applicable. This was followed in *Hari Krishna Das v. Brindaban Saha* (1 C. W. N., 712), which was a mofussil Case, and in which it was held that a suit for arrears of rent should not be dismissed for want of registration of the plaintiff's name at the time the suit is brought, and that it is sufficient if his name is registered before the decree is made. The same rule was laid down in *Belchambers v. Hussan Ali Mirza*, (2C. W. N., 493), and in *Abdul Khair v. Meher Ali*, 26 Calc., 712 : 3 C. W. N., 381 : so that the cases of *Surja Kanth Acharji v. Hamanta Kumari Devi* and *Dharanidhar Sen v. Wajidunnissa*, though not expressly overruled by the Full Bench decision in *Alimudin Khan v. Hira Lal Sen* are practically set aside. But actual registration of name is necessary to enable a person to recover rent : a mere order of the civil court for registration is not sufficient (*Ugra Mohan Thakur v. Bideshi Rai*, 5 C. W. N., 360).

Penalty for non-registration. If some of several joint landlords get their names registered under the Land Registration Act in respect of fractional shares, all the landlords may sue jointly for the entire rent, but will get a decree for a share of the rent proportionate to the share in respect of which their names are registered. The penalty for non-registration under sec. 78 of the Land Registration Act is the forfeiture, not of the whole rent, but of the rent of the share in regard to which the landlord is unregistered (*Nil Mallick Patra v. Ishan Chandra Sinha*, 25 Calc., 787 : 2 C. W. N., 600).

A Co-sharer landlord.—A co-sharer landlord can sue for the whole rent if he impleads his other co-sharers as defendants (*Pravara Nath Roy v. Ramani Kanto Roy*, 35 Cal., 331 : 12 C. W. N., 249, P. C., and *Sashi Kumar v. Sektanathi*, 35 Cal., 741).

Deposit of rent.⁽¹⁾

Deposit of rent.

Application
to deposit rent
in Court.

61. (1) In any of the following cases, namely :—

(1) By Act XX of 1884, the operation of ss. 61 to 64 was postponed to 1st, Febry., 1886. See note, p. 2.

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it ;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it ;
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf ; or
- (d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made ; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it ;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil
XIV of 1882.

Procedure (Sch. I, O. VI. r. 15), by the tenant, or, where he is not personally cognizant of the acts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

Extended to Orissa, (Not., Sept., 10th, 1891).

This section is an enabling section and not a mandatory one and it does not deprive the tenant of the right he has under the general law by which a valid tender, if kept good stops the running of interest (*Kripa-sindhu Mukerjee v. Annada Sundari Debi*, 35 Cal. 34 : 11 C. W. N., 983 : 6 C. L. J., 273 F. B.).

Tender of rent when valid.—A raiyat's tender of rent to be valid must be made at the proper place and to a person authorised to receive the same (*Ishan Chandra Rai v. Ahsanullah*, 16 W. R., 79). Tenants who have been in the habit of depositing in Court the rent due to a landlord in his sole name are not justified, without receiving notice or order to that effect, in making the deposit in the joint names of that landlord and another (*Raincy v. Nabo Kumar Mukhurji*, 24 W. R., 128). A mistake in the name of the *taluk* at the time of making the tender is immaterial, especially when there is no doubt that the *talukdar* is aware of the tender being made (*Uma Charn Sett v. Hari Prasad Misra*, 10 W. R., 101). It may be added that in order to make a tender of money in payment valid there must be an actual production of money, unless the person to whom the tender is made expressly or impliedly dispenses with such production. The offer of payment must also be unconditional (Cunningham and Shephard's Contract Act, pp. 166, 167, 5th edit). Deposit of rent under s. 61 must be treated as equivalent to part payment (*Atul Krishna Ghose v. Nripendra Narain Ghose*, 1 C. L. J., 114). A deposit of rent may be made by a tenant of *bastu* land, who is a raiyat of the village, although under a different landlord (*Pratap Chandra Das v. Bisecswar Paramanik*, 9 C. W. N., 416).

When rent was tendered to plaintiff's *am-mukhtar*, but plaintiff refused to receive it, the defendant was held liable to pay interest, as he had not followed the procedure prescribed by s. 61 (*Ransgit Singha v. Bhagabati Charan Rai*, 7 C. W. N., 720). See also S. A. No. 1116 of 1903, decided by Pratt and Mitra, JJ. on the 25th November 1904. But in *Jagat Turini Dasi v. Nobogopal Chaki* (34 Calc. 305 : 5 C. L. J., 270) it has

been laid down that a valid tender¹, which has been improperly refused but which is kept good, though it does not extinguish the indebtedness, stops the running of interest after the tender (approved by the Full Bench in *Kripa Sindhu Mukerjee v. Annada Sundari Debi*, 35 Cal. 34 : 11 C. W. N. 983 : 6 C. L. J., 273).

Fees leviable on applications to deposit rent.—The rule framed by Government as to the fees to be levied under sub-section (2) will be found in rule 5, chap. VII of the rules under the Tenancy Act, and is as follows :—“For deposits of rent under section 61 (2), 4 annas for every such deposit of Rs. 25 or less, with an additional 4 annas for every Rs. 25 or part of Rs. 25 in excess : provided that in no case shall the fee exceed the sum of Rs. 5.”

By notification of the Government of India, No. 4650 of the 10th September, 1889, it has been declared that

“the proper fee to be charged on an application to deposit in any Court rent not exceeding the sum of fifteen rupees, shall be as follows :—If the amount deposited does not exceed Rs. 2.8, one anna ; if the amount deposited exceeds Rs. 2.8, but does not exceed Rs. 5, two annas ; if the amount deposited exceeds Rs. 5, but does not exceed Rs. 10, four annas ; if the amount deposited exceeds Rs. 10, but does not exceed Rs. 15, six annas ; provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, VIII of 1885. (See High Court's¹) General Rules and Circular Orders, Civil, Chap. II, Part IV, rule 9, p. 78.)

Limitation.—Co-sharer landlords being jointly and severally entitled to the rent, the service of notice of the deposit of rent on any of them under sec. 61 will not reduce the period of limitation to six months under art 2 (a) of sch. III (*Rup Chand Mahton v. Gudar Singh*, 29 Calc., 283 : 6 C. W. N., 15).

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt granted by Court for rent deposited to be a valid acquittance.

¹ The only fees remitted by the Government of India in connection with applications for the deposit of rent are those on applications in respect of which fees have already been paid under section 61 (2) of the Bengal Tenancy Act, VIII of 1885, in accordance with the notification of the Government of Bengal, dated 21st December, 1885, (High Court's G. L. No. 1 of 11th January, 1891).

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered ;

in case (c) of that section, by the co-sharers to whom the rent is due ; and

in case (d) of that section, by the person entitled to the rent.

Extended to Orissa, (Not, Sept. 10th, 1891).

Deposit when valid.—Section 61 apparently only contemplates the deposit of a money rent and not of a rent payable in kind. Under Act VI of 1862, it was held that a deposit of rent contemplated by that Act must be one of rent which has become due, and that the deposit cannot be made before the rent is due (*Jibon Mandar v. Taramani Kunawari*, 6 W. R., Act X, 99). Under the old law, too, it was held that a deposit of rent could only be made by a registered tenant (*Duli Chand v. Meher Chand Sahu*, 8 W. R., 138) ; but there is no provision in this Act requiring occupancy raiyats and raiyats of an inferior status to register their names in the landlord's *scribhtah*. Under the present Act it has been ruled that a deposit of rent, though not made by the tenant himself but by a transferee on his behalf, is a valid deposit under sec. 61 (*Behari Lal Mukherji v. Basarat Mandal*, 25 Calc. 289).

Sub-section (1). Duty of Court.—"It would appear upon a consideration of these two sections (61 and 62) that if a verified application is made to the Court, and if it contains the grounds under which an application under s. 61 is authorized to be made and if it also contains the particulars which must be mentioned, the Court is bound to receive the rent and give a receipt to the tenant. The Court is not authorized at this stage of the proceeding, or at any subsequent stage to enter into a judicial enquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit.....It will be observed that there is no machinery provided for the Court to enter into a judicial enquiry in connection with the matter of the deposit, nor is there any provision entitling the *zamindar* to come in and to be heard upon the subject.....The

words 'the full amount of the money then due' in sec. 61 and 'the amount of the rent payable by the tenant' in s. 62, have no relation whatsoever to the amount of rent justly payable, but only to such rent due and payable. It is entirely at the option of the *zamindar*, either to receive the rent deposited or not, just as he pleases. He may, if he objects to the amount of rent payable by the tenant for his holding, bring a suit under sec. 158 of the Act to have that matter determined, or he may bring a suit for the recovery of the whole of the arrear of rent due to him up to the date of deposit within 6 months of the date of the service of the notice upon him, disregarding altogether the deposit made by the tenant; and if in that suit it be proved that the tenant had without reasonable or probable cause neglected or refused to pay the amount of rent due to the *zamindar*, the Court might award to him damages and costs in addition to the rent. But if, on the other hand, it appears that the suit of the *zamindar* was without reasonable or probable cause, the Court might award the tenant damages as against the landlord. Upon these considerations it seems to us clear that when a deposit is made by a tenant, and the Court grants him a receipt, the *zamindar* cannot in any way be prejudiced, and that the tenant makes such a deposit at his own risk" (*Sridhar Rai v. Rameswar Singh*, 15 Calc., 166).

Sub-section (2). A deposit of rent operates as an acquittance.—When a tenant entertains a *bona fide* doubt as to who is entitled to receive his rent, and deposits it in Court under the provisions of this section, his deposit operates as an acquittance, and when such a deposit is proved as a defence to a suit for rent, the suit should be dismissed, and when the defendant is not to blame for the litigation, he is entitled to his costs (*Stalkartt v. Guru Das Kundu*, 21 Calc., 680).

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

Notification of receipt of deposit.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the

application as the person to whose credit the deposit was to be entered ;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate ; and

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Extended to Orissa, (Not., Sept. 10th, 1891).

Service of notice.—The local Government has framed the following rule for the service of notices under this section :—"In cases (a), (b) and (d) of section 61 herein referred to, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1898 (VI of 1898) or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure." (See rule 32, chap. V of the Government rules under the Tenancy Act).

Limitation.—A suit for arrears of rent which fell due before a deposit was made under sec. 61 on account of the rent of the same holding must be brought within six months of the date of service of the notice of the deposit [Sch. 111, part 1, art 2 (a)] But in a case under Act VI of 1862, in which a *zamindar* had sold a *patni* for arrears of rent due for 1224, and the *patnidar* sued for the reversal of the sale and deposited the rent for 1225, and the *zamindar* on the reversal of the sale of the *patni* sued for the rent of 1224 and was met with the objection that the suit should have been brought within six months from the date of the deposit of the rent of 1225, it was held that the *zamindar* was entitled to recover, as he could not sue for the rent of 1224, until the sale caused by him for realizing those rents had been reversed (*Mahomed Shuhur-ullah v. Rumya Bibi*, 7 W. R., 487). Notice of deposit under s. 63 does not give a fresh and independent cause of action in respect of the balance then due (*Atul Krishna Ghosh v. Nripendra Narain Ghosh* 1 C. L. J., 114).

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Extended to Orissa, (Not., Sep. 10th, 1891).

Effect of withdrawal of deposit of rent by landlord.—In a suit decided by the Privy Council, in which a *patnidar* deposited two year's rent under this Act, and the rent was withdrawn by the landlord by a petition, stating that "my tenant had deposited Rs. 1,043 rent due to me," it was held that by such action the landlord must be regarded as having elected to recognize and confirm the *patni* tenure (*Maithu Sudan Singh v. Rooke*, 25 Cal., 1 : 1 C. W. N., 433 : L. R., 24 I. A., 164). The mere deposit of rent in the Collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant is not sufficient notice to the *zamindar* of such purchase, nor is the mere acceptance by the *zamindar* of rent so paid an acknowledgment on his part of

the purchaser as his under-tenant ; but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered (*Mritan Jai Sarkar v. Gopal Chandra Sarkar*, 2 B. L. R., A. C., 131 : 10 W. R., 466).

Sub-section (2).—No rule has as yet been made by the Local Government for the payment of deposits of rent by postal money-order.

Court-fee leviable on applications for the payment and return of deposits of rent.—The Government of India by its Notification, No. 4650 of the 10th September, 1889, has remitted all fees payable under clause (a), para (4) and clause (b), para. 2 of art. 1, Sch. 11 of the Court Fees Act, on applications for the payment of deposit of rent in which the deposit does not exceed Rs. 25, and the application is made within three months of the date on which the deposit first became payable to the applicant (High Court's General Rules and Circular Orders, Civil, Chap. 11, Part IV, rule 9, A (10), p. (10), p. 78). But when the deposit exceeds Rs. 25, but is less than Rs. 50, or when the deposit exceeds Rs. 25, but the application has not been made within three months of the date on which the deposit became payable, the application for payment or for the return of the deposit will, if presented to a Civil Court of original jurisdiction, be subject to a fee of 1 anna under para. 4, cl. (a), art. 1, Sched. 11, Act VII of 1870. When the deposit amounts to or exceeds Rs. 50, and in all cases in which the application is made to a principal Civil Court of original jurisdiction, the application for the payment or return of the deposit will be subject to a Court-fee duty of 8 annas, under para. 2, cl. (b), art. 1, Sched. 2, Act VII of 1870.

Arrears of rent.

65. Where a tenant is a permanent tenure-holder,

Arrears of rent.
Liability to sale
for arrears in
case of perma-
nent tenure,
holding at fixed
rates or occu-
pancy-holding.

a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejection for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Extended to Orissa, (Not., Sept. 10th, 1891).

Former law.—Under the former law, a permanent tenure-holder could not be ejected for arrears of rent, unless there was a condition to this effect in his lease (*Balaram Das v. Jyendri Nath Mallik*, 19 W. R. 319 ; *Mumtaz Bibi v. Grish Chandra Choudhuri*, 22 W. R., 376).

But he could always protect himself from ejectment by paying up the arrears decreed within 15 days of the date of the decree (*Jan Ali Chaudhuri v. Nityanand Basu*, 10 W. R., F. B., 12; *Kamala Saha v. Ram Ratan Neogi*, 11 W. R., 201; *Duli Chand v. Meher Chand Sahu*, 12 B. L. R., 439; *Mathur Mohun Pal v. Ram Lal Basu*, 4 C. L. R., 469; *Mahomed Amir v. Priag Singh*, 7 Calc., 566; *Duli Chand v. Raj Kishor*, 9 Calc., 88). If there was no clause to this effect in his lease, and the tenure was transferable by the title deeds or the custom of the country, the landlord could only sell it (sec. 105 of Act X of 1859; sec. 4, Act VIII, B. C., of 1865; sec. 59, Act VIII, B. C., of 1869). All farmers and lease-holders, not having a permanent transferable interest in the land, and all raiyats could be ejected for non-payment of rent (secs. 21 & 22, Act X of 1859; and 22 and 23 Act VIII, B. C., of 1869). The High Court, however, in *Kristendra Rai v. Aina Bewa*, (8 Calc., 675; 10 C. L. R., 399), ruled that the provisions of sec. 59 of Act VIII, B. C., of 1869 applied to any tenure, which was transferable by sale; so that a landlord who had a decree for arrears of rent against a raiyat with a transferable *jote*, could not eject him, but could only sell the holding. This was followed in *Fukir Chand v. Fauzdar Misra*, (10 Calc., 547), though Mitter J., in this case expressed a doubt as to the correctness of this ruling.

Present law.—Under the terms of this section, permanent tenure-holders, raiyats holding at fixed rates and occupancy raiyats cannot be ejected merely on the ground of arrears of rent. They can be ejected only on the grounds specified in secs. 10, 18 and 25 and they cannot contract themselves out of the provisions of this section, even though secs. 178 and 179 are inapplicable (*Samanta Radhacharan v. Ananta Prasad* 4 C. L. J., 521). Only non-occupancy raiyats and under-raiyats can now be ejected for arrears of rent. But the tenures and holdings of tenants of the first three classes can be sold in execution of decrees for arrears of rent, and the rent is a first charge upon them. But this can only be done by a person who is a landlord at the time of the sale. For, if a landlord, after obtaining a decree for arrears of rent, against a saleable tenure loses his interest in the estate, he cannot bring the defaulting tenure itself to sale in execution of a decree for arrears (*Hem Chandra Bhanja v. Mon Mohini Dasi*, 3 C. W. N., 604; but a different view was taken in *Chatrapat Singh v. Gopi Chond Bothra*, 26 Calc., pp. 757, 760). The decision in *Hem Chandra Bhanja v. Mon Mohini Dasi* has now been overruled by a full Bench in *Khetra Pal Singh v. Kritarthamayi Dasi*, (33 Calc., 566; 10 C. W. N., 547; 3 C. L. J., 470,) in which it has been decided that, if at a time when a suit for rent is instituted, and a decree is made, the plaintiff is still the

landlord, the fact that subsequently he sells his landlord's interest does not prevent him from obtaining the benefit of sec. 65 of bringing to sale the tenure or holding in execution of such decree, the rent continuing as a first charge thereon. Section 65 applies to *patni taluks* (*Piari Mohan Mukhurji v. Ram Chandra Bosu*, 6 C. W. N., lxxxviii).

Rent a first charge on tenures and holdings.—In several cases under the former law it was held that a sale held in execution of a decree for rent should have priority over a sale held in execution of a decree of the Civil Court (*Khubari Rai v. Raghubar Rai*, 2 W. R., 131; *Gopal Mandal v. Subhudra Boistabi*, 5 W. R., 205; *Safarunnissa v. Sari Dhopi*, 8 W. R., 384; *Sadhan Chandra Basu v. Guru Charan Basu*, 15 W. R., 99). In other cases the contrary was held (*Pranbandhu Sarkar v. Sarbasundari Debi*, 3 B. L. R., A. C., 52, note; 10 W. R., 434; *Ram Baksh Chattangia v. Hridaymani Debi*, 10 W. R., 446; *Tirthanand Thakur v. Paresmon Jha*, 13 W. R., 449; *Samiraddin v. Harish Chandra Karmokar*, 3 B. L. R., A. C., 49; 13 W. R., 451, note; *Daulat Ghazi Chaudhri v. Manwar*, 15 W. R., 341; *Wahid Ali v. Sadik Ali*, 17 W. R., 417). In *Tirthanand Thakur v. Paresmon Jha* (13 W. R., 449), it was said that the produce of the land is by law (sec. 112, Act X of 1859) hypothecated for the rent payable in respect thereof, but not the land itself. These conflicting decisions were all considered by a Full Bench in *Sham Chand Kundu v. Brajanath Pal* (21 W. R., 94; 12 B. L. R., 484), in which it was laid down, that a *samindar* who had obtained a decree for arrears of rent of a transferable tenure was entitled to sell the tenure, and a person who had obtained a transfer of such tenure, which he had not registered, and could not show a sufficient reason for not registering, was bound by the sale, and could not set up a title which he had acquired by a previous sale. This was followed in *Rash Bihari Bandopadhyay v. Piari Mohan Mukhurji* (4 Calc., 346), in which it was ruled that a decree for rent obtained by a landlord against his registered tenant rendered the tenure comprised in the decree liable for sale, although such tenure had passed into other hands than those of the judgment-debtor, and in *Chandra Narain Singh v. Krishna Chand Golichu* (9 Calc., 855), in which a decree for arrears of rent of an under-tenure had been obtained against a tenant who became an insolvent, when the whole tenure became vested in the Official Assignee. On an application being made under secs. 59 and 60 of the Rent Law, (Beng. Act VIII of 1869), for an order that the tenure should be sold for its own arrears, this was objected to by the Official Assignee, who contended that the decree-holder's only right was to prove in the insolvency for the amount of his debt; but it was held that whether the arrears became due before or after the insolvency of the judgment-debtor, the decree-holder was entitled to sell the tenure in execution of his decree.

Now, however, it is clear from the last clause of this section that whenever a tenure or holding is sold otherwise than in execution of a decree for arrears of rent, it is sold subject to the lien of the landlord on it for any rent due at the time of sale. The landlord is, therefore in the position of a first mortgagee as far as the rent is concerned (*Tarini Prasad Rai v. Narain Kumari Debi*, 17 Calc., 301). But the purchaser is not personally liable for the rent which fell due before the date of his purchase (*Jogemaya Dasi v. Girindra Nath Mukhurji*, 4 C. W. N., 590). So, when a tenure is sold in execution of a mortgage decree, the purchaser takes it subject to the liability for the rent which had accrued due in respect thereof at the time of its purchase (*Maharani Dasya v. Horendro Lal Rai*, 1 C. W. N., 458). But the case is different when the tenure or holding is sold in execution of a decree for arrears of rent, for in this case it passes to the purchaser free of all liability for the rent which had accrued due prior to the date of sale. This was decided in *Faiz Rahman v. Ram Sukh Bajpai*, (21 Calc., 169) in which it is said that "rent falling due during the time that a tenure belongs to any particular tenure-holder is a first charge on the tenure only so long as it is his and has not been sold for arrears of rent. This, we think, is made clear beyond doubt by clause (c) of section 169, which enacts that if any surplus remains of the proceeds realized by the sale of a tenure in execution of a decree for arrears of rent, after satisfying that decree, any rent falling due between the date of the suit in which the decree was passed and the date of sale shall be paid therefrom to the decree-holder. This provision of the law evidently shows that the Legislature intended that the charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein, shall be transferred from the tenure to its sale proceeds, and that the tenure shall pass to the purchaser at a sale for arrears of rent free of all liability created upon it by the default of the previous holders." Further, "section 65 which provides that the tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and that the rent shall be a first charge thereon, only intends what is explicitly laid down in subsequent sections of the Act, that is, those in Chap. XIV, namely, that the charge should be enforced by the sale of the tenure or holding free of encumbrances, and if in any case the decree for rent either has not been, or cannot be, enforced by the sale of the tenure, the charge created by section 65 cannot be enforced in any other way" (*Sashi Bhushan Guha v. Gagan Chandra Saha*, 22 Calc., 364). So when the purchaser of a *patni taluk* paid off a decree for rent obtained against the old tenant for a period anterior to that of the rent decree in execution of which the tenure was sold, it was held that the purchaser was not entitled to contribution from the old tenant against whom the rent decree was obtained (*Piary Mohan Mukhurji v.*

Sec. 65.] CHARGE ON TENURES OR HOLDINGS FOR RENT. 225

Sriram Chandra, 6 C. W. N., 794). In *Ram Saran Poddar v. Mahomed Latif*, (3 C. W. N., 62), it was held that when a landlord himself sold an occupancy holding in execution of money decree, he could not again sell it in execution of a decree for rent due for past years, and that a purchaser at such a sale acquired no right in the holding. Where in execution of a decree for rent a *raiyati* holding was sold and purchased by the landlord, and the plaintiff, a mortgagee of the *raiyati* holding whose mortgage was not annulled, sued on his mortgage, *held*, that the mortgagee was entitled to enforce the mortgage on payment of the money due under the rent decree. The landlord, when he made the purchase, became absolutely entitled to the property, and the landlord's charge for rent which was for his benefit continued to subsist after his purchase, and the plaintiff was to be regarded as a second mortgagee (*Meherunnissa v. Sham Sundar Bhuiya*, 6 C. W. N., 834). A *ticcadar* on the expiry of his lease obtained a decree against a tenant for rent, which fell due during the pendency of his lease. In execution of this decree, the tenure was sold and purchased by A. The landlord obtained a decree for rent for subsequent years against the same tenant. In the proceedings in execution taken on the decree obtained by the *ticcadar*, the landlord, decree-holder, put in an application stating that he had obtained a decree for arrears of rent for later years. Subsequently, the landlord took out execution of his decree and had the tenure put up to sale. A then intervened, objecting to the sale of the tenure. *Held*, that under s. 65 of this Act, rent being a first charge on the tenure, that first charge did not stand in favour of the *ticcadar* for the rent, which fell due during the pendency of his lease, but it stood in favour of the landlord in possession for the rent which fell due afterwards, and that the *ticcadar* in execution of his decree could not sell the tenure itself so as to pass all rights in it to the auction-purchaser A, and annul the first charge standing on it in favour of the landlord. The tenure itself was liable to sale under the decree obtained by the landlord against the tenant (*Srimanta Rai v. Mahadeo Mahata*, 31 Calc., 550 : 8 C. W. N., 531). The authority of this case was very much shaken by the decision of the Full Bench in *Khetrapal Sing v. Krilarthamoyi Dassi* (33 Cal. 566) and has been expressly dissented from in *Moharaj Bahadur Singh v. Forbes* (35 Calc. 737 : 7 C. L. J., 652 : 12 C. W. N., cxxii) in which it was held that a decree obtained by a zemindar after the sale of his zemindaree interest for arrears due before such sale, is a decree for rent entitling him to the first charge provided for in this section. Where A held a tenure in the *benami* of B, who was the recorded tenant and the latter without the knowledge or consent of A executed a bond in favour of the landlord, who knew that B was merely a *benamidar*, mortgaging or charging the tenure for arrears of rent due in respect thereof ; *held*, that the bond

could not affect the tenure and that the landlord suing on the bond was not entitled to claim a charge on the land (*Roizuddin v. Kali Nath Mukhurji*, 33 Calc., 985 : 4 C. L. J., 219).

Road cess and interest.—The word “rent” in this section includes road-cess payable by the tenant [sec. 3 (5)], and therefore, in the case of sale of a tenure in execution of a decree for road-cess it was held that the tenure itself had passed and not merely the right, title, and interest of the judgment-debtor (*Nobin Chandra Laskar v. Bansinath Paramanik*, 21 Calc., 722). But it has been held that an amount due for cesses is only a personal debt and cannot be recovered under the Public Demands Recovery Act from the property on which it is assessed, when such property belongs to a person whose name has not been recorded as proprietor under Act VII, B. C., of 1876 (*Shekaat Hussain v. Sasi Kar*, 19 Calc., 783). Interest on arrears of rent is not rent as defined in sec. 3 (5); and so would not seem to be a first charge on a tenure or holding under the provisions of this section. See note, p. 33.

Execution of decrees for arrears of rent.—Under the former law, a decree for arrears of rent of a saleable under-tenure could not be executed by the attachment of any immoveable property except the tenure itself, before it was shown that satisfaction of the decree could not be obtained by execution against the person or moveable property of the debtor: and it was only after sale of the under-tenure that the other immoveable property became attachable: and process could not be issued against the person and property of the debtor simultaneously (*Deanatullah v. Nazar Ali Khan*, 1 B. L. R., A. C., 216 : 10 W. R., 341; *Joki Lal v. Narsingh Nurain Singh*, 4 W. R., Act X, 5; *Harish Chandra Rai v. Collector of Jessore*, 3 Calc., 712; *Lalit Mohan Rai v. Binodini Debi*, 14 Calc., 14). But these restrictions have now all been removed. Under the present law the landlord's position is this: he has a mortgage or charge upon the tenure for the rent, and he has a remedy against the tenant personally for the debt due to him. That being the case, he has a right to avail himself of either of his remedies, and is not bound to proceed against the tenure in respect of which the arrears have accrued in the first instance, but is entitled to pursue his other remedies before he sells the tenure itself (*Turini Prasad Rai v. Narain Kumari Debi* 17 Calc., 301). A landlord who obtains a decree for rent is entitled, if he pleases, in the first instance to attach the person of his judgment-debtor. (*Bhabani Charan Datta v. Pratap Chandra Ghose*, 8 C. W. N., 575). He is not obliged in the first instance to endeavour to execute his decree by putting up for sale the tenure, the rent in respect of which is in arrear, and for

which he has obtained a decree. The provisions of sec. 68 of the Transfer of Property Act are not amongst those made applicable by sec. 100 of that Act to a person having a charge within the meaning of the latter section, and the charge referred to in sec. 65 of the Act is not such a charge as that defined by section 100 of the Transfer of Property Act (*Fatik Chandra De v. Foley*, 15 Calc., 492). In a case in which decrees for rent had been obtained against a Hindu widow, the question was raised whether they were decrees merely against her personally, and therefore, to be satisfied out of whatever she left at her death, or whether the estate which had passed to the next heirs was liable. It was decided that the debt could not be regarded as other than a personal debt, payment of which could be enforced against the property left by the widow (*Krishna Govinda Mazumdar v. Hem Chandra Chaudhri*, 16 Calc., 511). When a landlord has taken a mortgage of the holding of a tenant, he is debarred under sec. 99 of the Transfer of Property Act from bringing the tenure to sale, in execution of a rent decree obtained for arrears due in respect of it otherwise than by instituting a suit under sec. 67 of that Act (*Rai Ramani Dasi v. Surendra Nath Datta*, 1 C. W. N., 80; *Sheodeni Tewari v. Ram Saran Singh*, 26 Calc., 164). (But see *Khiarajmal v. Dain*, 32 Calc., 296). Under the head of moveable property, which a landlord is at liberty to proceed against in execution of a decree for arrears of rent, is apparently his tenant's right to recover rent under a decree from an under-tenant (*Mahesh Chandra Chaturji v. Guru Prasad Rai*, 13 W. R., 401). But where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable him to earn his livelihood as such, are under section 266 (b) C. P. C., exempt from attachment and sale in execution of decrees; but the materials of his houses and other buildings occupied by him as an agriculturist, though exempt from attachment or sale in execution of ordinary decrees [cl. (c)], are yet liable to be attached and sold in execution of decrees for arrears of rent. (See proviso 2 to sec. 266, C. P. C., *Maniklal Venital v. Lakha*, 4 Bom., 429; and *Radha Krishna Hakumji v. Balvant Ramji*, 7 Bom., 530.) A decree for the consolidated rent of three tenures cannot be executed by the sale of the tenures. This would be making each tenure liable for the rent of the other tenures (*Mahendra Ram Tewari v. Ram Khirwan Rai*, 10 C. W. N., ccliii; *Hridai Nath Das v. Krishna Prosad Sarkar*, 11 C. W. N., 497; *Bipra Das Dey v. Raja Ram Bandopadhyaya*, 13 C. W. N., 650). As to what passes at a sale held in execution of a decree for arrears of rent *i. e.*, whether the tenure or holding or only the right, title and interest of the judgment-debtor, see notes to sec. 159. The purchaser in execution of a rent decree is entitled to hold the tenure sold in preference

to a purchaser under a prior mortgage decree whose claims are transferred to the surplus sale proceeds if any (*Gopinath Mahapatra v. Kashi-nath Beg*, 13 C. W. N., 412 : 9 C. L. J., 234).

Rights of fractional co-sharer landlords under this section.

—According to the terms of sec. 65, the rent due to a fractional co-sharer landlord would seem to be as much a first charge on the tenure or holding on which it has accrued as the rent due to the whole body of landlords. But the words “his tenure or holding shall be liable to sale in execution of a decree for the rent thereof” have been interpreted as presupposing a suit and a decree under the Act *i. e.*, a decree made in a suit in which all the landlord co-sharers are plaintiffs and not merely some of them, that is, fractional co-sharers (*Narain Uddin v. Srimantu Ghosh*, 29 Calc., 219). In any case the provisions of sec. 188 apparently prevent his enforcing his rights under this section, and so it has been held that an attachment of a tenure or holding in execution of a decree for arrears of rent is not such an attachment as is contemplated by sec. 170 of the Act (*Beni Madhab Rai v. Jaod Ali Sarkar*, 17 Calc., 390). A fractional co-sharer who has obtained a decree for his share of the rent cannot therefore, sell the tenure or holding, but only the right, title and interest of his judgment-debtor in it in execution of his decree, and it is clear that, were he to be allowed to do otherwise, it would be unfair to his other co-sharers, who had not sued for their shares of the rent. A co-sharer landlord has also no right under sec. 65 to proceed against a share of the holding, when the original holding has not been subdivided (*Huri Charan Basu v. Ranjit Singh*, 1 C. W. N., 521 : 25 Calc., 917). The Bengal Tenancy Act does not contemplate or provide for the sale of a holding at the instance of one only of several joint landlords, who has obtained a decree for the share of the rent separately due to him ; such a sale must be under the provisions of the Civil Procedure Code and would not carry with it the special incidents attaching to a sale under the Bengal Tenancy Act. When, therefore, an occupancy holding, not transferable by custom or local usage, is sold in execution of a decree obtained by one of several joint landlords for the share of the rent separately due to him, the purchaser acquires nothing by his purchase, the judgment-debtor having no saleable interest in the holding (*Saudagar Sarkar v. Krishna Chandra Nath*, 26 Calc., 937 : 3 C. W. N., 742). The decree referred to in sec. 65 for the satisfaction of which an occupancy holding can be brought to sale, is a decree obtained by all the landlords, or at all events a decree obtained by some of the landlords for the entire rent in the presence of all. A 16 anna proprietor obtaining a decree for the whole rent in a suit brought against all the tenants is entitled to sell the tenure in execution of his decree, although he recognized the fact that the tenants had subdivided the tenure and chose to accept a decree making each of them

separately liable for his own share of the rent (*Sarbo Lal v. Wilson*, 32 Calc., 680). A fractional shareholder selling a non-transferable holding in execution of a decree which he obtained for his share of the rent is, therefore, in no better position than an outsider selling the holding in execution of a money decree (*Jarip v. Ram Kumar De*, 3 C. W. N., 747; *Afraz Mollah v. Kalsamunnissa*, 10 C. W. N., 176; 4 C. L. J., 68). But a co-sharer who sates for the whole rent and makes his co-sharers parties defendants is entitled to bring the tenure to sell under this Act. (*Pramada Nath Roy v. Ramani Kanta Roy*, 35 Calc., 331; 11 C. W. N., 983; 6 C. L. J., 273, (P. C.); *Sashi Kumar v. Seetanath*, 35 Calc., 744). When a co-sharer is kept out of possession wrongfully by another co-sharer, a suit for contribution at the instance of the latter for rent paid by him during the period of dispossession does not lie against the former (*Swarna Mayi Debi v. Hari Das Rai*, 6 C. W. N., 903).

Changes made by Act I, B. C., of 1907. The law on this point has, however, been altered, by sec. 158 B, introduced into the Act by Act I, B. C. of 1907, and Act I, E., B. C., 1908, which provides for the passing of a tenure or holding in execution of a decree for arrears of rent obtained by one or more co-sharer landlords, provided the suit has been framed in accordance with the provisions of the new section. See also the new Section 188A.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant, for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into

Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

Extended to Orissa, (Not., Sept. 10th, 1891).

Effect of assignment of arrears of rent.—When arrears of rent have been assigned to a third party, they are no more than civil debts, the assignor is no longer the landlord, and the tenant cannot be ejected under this section for non-payment (S. A. No. 362 of 1895, decided by O'kinealy and Rampini, JJ., 15th Feby., 1898). The same rule applies to the assignment of decrees for arrears of rent (*Dino Nath De v. Golap Mohini Dasi*, 1 C. W. N., 183).

Arrears of produce rent.—Under the provisions of Act VIII B. C., of 1869 a suit in ejectment will lie for arrears of a *bhaoli* rent (*Krishna Gopal Murwar v. Barnes*, 2 Calc., 374). The same would appear to be the case under the terms of this section.

Sub-section (1).—In *Hem Chandra Bhanjo v. Mon Mohini Dasi*, (3 C. W. N., 604), it was said, but apparently by way of an *obiter dictum*, that section 66 does not apply to a case in which the person seeking to execute the decree is not a landlord at the time of the execution. See, however, some observations *contra* in *Chatrapat Singh v. Gopi Chand Bothra*, (26 Calc., pp. 757, 760). See note p. 221. When a suit is brought before the expiry of the Bengali year in respect of the arrears of rent for that year, the landlord is not entitled to eject the tenant under section 66 (*Guru Das Shut v. Nand Kishor Pal*, 26 Calc., 199).

Sub-section (2).—The fifteen days grace allowed to a lessee prior to ejectment cannot be negatived by any condition in the lease (*Madhub Chandra Adit v. Ram Kalu*, 16 W. R. 151; *Jun Ali Chaudhari v. Nityanand Basu*, 10 W. R., F. B., 12; *Duli Chand v. Raj Kishor*, 9 calc., 88). If the judgment-debtor, pays the decretal amount within 15 days of the appellate Court's decree, he is protected from eviction (*Abdul Rahman v. Digambari Dasi*, 18 W. R., 477; *Nur Ali Chaudhri v. Koni Miah*, 13 Calc., 13. See also *Nam Narain Singh v. Raghu Nath Sahai*, 22 Calc., 467). But in a case in which an attempt had been made by the Court of First Instance to modify a decree in review, which was pronounced illegal, it was held that the 15 days were to be reckoned from the only decree in the case, *i. e.*, the original decree of the Munsif (*Poresh Nath Ghosh v. Krishna Lal Datta*, 23 W. R., 50). If the Court is closed on or before the last day of the 15 days, the decretal amount

can be paid in on the first day the Court re-opens (*Hussain Ali v. Donzelle*, 5 Calc., 906). This is now expressly made law by the terms of this sub-section. See, also, sec. 10, Act X of 1897. Payment into Court within the 15 days with a protest as to a sum improperly charged as interest is a sufficient payment to protect from ejectment (*Srishtidhar Dey v. Durga Narain Nag*, 17 W. R., 462). When the decretal amount was paid into Court within, but not credited in the treasury until after the expiry of, the 15 days, it was held that this was a good payment (*Gajadhar Pauri v. Naik Pauri*, 8 Calc., 528). The decree for ejectment passed under sec. 66, cl. (2), need not incorporate the terms as to the ejectment being avoided by payment within fifteen days from the date of the decree. These terms are rather in the nature of a direction to the Court of execution (*Bodh Narain v. Mahomed Musa*, 26 Calc., 639 : 3 C. W. N., 628).

Sub-section (3).—The Court referred to in this sub-section is the Court passing the decree or the appellate Court, (*Rao Bani Ram v. Prannath Saha*, 18 W. R., 412), but not the Court executing it (*Sankar Singh v. Hari Mohan Thakur*, 22 W. R., 460 ; *Poresb Nath Ghosh v. Krishna Lal Datta*, 23 W. R., 50). The extension of time authorised by sec. 66 [cl. (3)] can be granted by the Court after the decree and not only when passing the decree under cl. (2). It has been further held by Prinsep, J., that the application for such extension of time may be made by the judgment-debtor on a mere petition and not in the form of an application for review of judgment (*Bodh Narain v. Mahomed Musa*, 26 Calc., 639 : 3 C. W. N., 628).

Waiver of the right to eject.—A landlord cannot sue for cancellation of lease and ejectment after he has sued for and realized the arrears of rent due (*Umesh Chandra Chaturji v. Kamarudin Lashkar*, 7 W. R., 20). Receipt of rent subsequent to decree for ejectment from a tenant against whom the decree was passed renders execution of the decree impossible (*Noba Krishna Mukkurji v. Harish Chandra Banurji*, 7 W. R., 142 ; *Savi v. Mahesh Chandra Basu*, W. R., Sp.No., 1864, Act X 29). A landlord, who sues for arrears of rent for the whole of one year and a portion of the next, and also for ejectment is not entitled to a decree for the latter. The right to ejectment under section 22 of the Rent Act (Beng. Act VIII of 1869) accrues at the end of the year, and forfeiture or determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived (*Jogeshar Chaudhrain v. Mahomed Ibrahim*, 14 Calc., 33).

67. An arrear of rent shall bear simple interest
 Interest on at the rate of twelve [and a half] per
 arrears. centum per annum from the expiration
 of that quarter of the agricultural year in which the
 instalment falls due [to the date of payment or of the
 institution of the suit, whichever date is earlier.]

The words "and a half" within brackets have been inserted and for the words "to the institution of the suit", the words "to the date of payment or of the institution of the suit, whichever date is earlier," have been substituted by s. 15, Act I, B. C., 1907 and in Eastern Bengal by Act I, E. B. C., 1908.

Interest must be decreed.—Under the terms of this section interest at the rate of $12\frac{1}{2}$ p. c., p. a., must be decreed. The Courts have no discretion in the matter. Only if damages are awarded under sec., 68, should interest not be decreed. Under the former law it has been held that when a decree for rent at an enhanced rate is obtained, interest runs on the arrears at the rate of 12 p.c. p.a. from the date on which they became due (*Ahsanullah v. Aftabudin Mahomed*, 3 C. L. R., 382. But see *Ghulam Ali v. Gopal Lal Tagore*, 1 W. R., 56; *Samira Khatun v. Gopal Lal Tagore*, 1 W. R., 58; *Raj Mohan Neogi v. Anand Chandra Chaudhri*, 10 W. R., 166). Even when a landlord has no village office and has not under sec. 54 (2) appointed a convenient place for payment, arrears of rent will carry interest (*Fakir Lal Goswami v. W. C. Bonnerjee*, 4 C. W. N., 324). The mere non-enforcement by a landlord even for a series of years of his right to interest upon arrears of rent does not amount to a waiver of such right (*Johari Lal v. Ballab Lal*, 5 Calc., 102; 4 C. L. R., 349; *Rati Kant Basu v. Gangadhar Biswas*, W. R., F. B., 13; *Shyama Charan Mandal v. Hiras Mulla*, 26 Calc., 160).

Interest only due at the end of each quarter.—According to the terms of this section, whether the rent is payable monthly or quarterly, interest only runs from the expiration of the quarter in which the instalment of rent falls due. In the case of *Hemanto Kumari Debi v. Jagadendra Nath Rai*, (22 Calc., 221), however, their Lordships of the Privy Council have said :—"It appears there are some arrears which have become due since the Bengal Tenancy Act, 1885. The Subordinate Court held that interest was to be calculated monthly on the arrears but the High Court held that under the provisions of that Act as regards arrears which became due after the Act came into force, the interest should be calculated quarterly. It appears to their Lordships that the High Court were wrong, and that the provision in section 67 of the Act

on which they relied, only applies to cases when the rent is payable quarterly. Here it is not disputed that the rent is payable monthly, and on rent in arrear it appears to their Lordships that interest ought to be calculated monthly." If the lease creating a tenure provided for monthly instalments a purchaser at a rent sale is bound by the same and must pay interest as each monthly kist falls due (*Nadia Sundari Debi v. Girindra Narain Singha*, 7 C. L. J., 24 n).

Valid tender.—A valid tender of rent, however, stops the running of interest (*Kripa Sindhu Mukerjee v. Annadu Sundari*, 35 Calc., 34 : 11 C. W. N., 983 : 6 C. L. J., 273 F. B).

Changes made by Act I, B. C., of 1907.—The report of the Select Committee on the Bill explains the changes made in this section as follows :—

"The present clause provides definitely for the levy of interest on arrears of rent before the institution of a suit. This point arose in the course of our discussion of clause 4, regarding the definition of rent. We find that the framers of the Act of 1885 apparently intended to provide for the levy of interest before the institution of a suit, and that this was definitely allowed by the former Acts. From the wording of section 67, however, it might be inferred that interest could only be levied on arrears in cases where a suit had been instituted, and that any interest, taken before a suit was brought, might be treated as an illegal exaction under section 75. It has been represented that it is a common practice for landlords to take interest on arrears paid without the institution of a suit, and that it would be a hardship both to landlords and to tenants to hold that no interest could be charged unless a suit were instituted. We consider that on the whole it is advisable that the law should contain a definite provision in regard to this matter, more especially as such provision would merely be carrying out the intention of the framers of the original Act.

We also propose that the rate of interest should be altered from 12 per cent to 12½ per cent. The adoption of the latter rate will greatly facilitate calculation, and this is the rate which is allowed by the Cess Act on arrears of cesses payable by tenants to landlords."

The same changes have been effected for Eastern Bengal by Act I, E. B. C., of 1908.

Produce rents.—No interest would seem to be payable on arrears of produce rents, for interest is under this section payable only on an "arrear of rent", and an "arrear" is defined in sec. 54 (3) as any instalment or part of an instalment of rent not duly paid at or before the time when it falls due, and it is only a money rent, which is under s. 53 payable in instalments. See also *Krishna Gopal Mawar v. Barnes* (2 Calc., 374), and *Rangayya Appa Rao v. Bobba Srinamulu* 8 C. W. N., 162 :

L. R., I. A., 31) seem that damages may be awarded in a suit for the money equivalent of a produce rent (*Apurba Krishn Rai v. Ashutosh Datta*, 9 C.W. N., 122).

Contracts made after the passing of the Act — Under section 178 (3) (h) nothing in any contract made between a landlord and a tenant after the passing of this Act (*i. e.*, 14th March, 1885), shall affect the provisions of this section relating to interest payable on account of arrears of rent : so, in a case in which the tenant had agreed by a *kabulyat* executed before the passing of the Act, but the term of which expired after the Act had come into force, to pay interest on arrears at the rate of 1 anna per rupee *per mensem*, it was held that this was a good contract during the pendency of the lease, but on the expiry of its term the tenant, who had held on without executing a fresh lease, was liable to pay interest on the arrears only at the rate of 12 p. c., p. a., (*Alim v. Sotish Chandra Chaturdharin*, 24 Calc., 37); and when the lease is a subsisting one, a purchaser buys the lease subject to its terms including that relating to interest (*Lal Gopal Datta v. Monmotho Lal Datta*, 9 C. W. N., 175 : 32 Calc., 258. See also *Raj Narain Mitra v. Panna Chand*, 7 C. W. N., 203). So also in the case of a *kabulyat* executed before the passing of the Act, when the tenant has acquired the holding by private purchase (*Tilak Chandra Rai v. Jasoda Kumar Rai*, 11 C. W. N., 215. But in another case, *Kishori Lal De v. Administrator General of Bengal*, (2 C. W. N., 303) in which a tenant had agreed in a *kabulyat* executed before the passing of the Act, for a term which expired before the Act came into force, to pay interest at the rate of 75 p. c. p. a., and who had held over on the expiry of the term of his lease and who was sued for arrears accruing due after the coming into force of this Act, it was held that he was liable to pay interest at the rate specified in the *kabulyat*, on the ground that he was to be taken as holding over on the same conditions as those set out in his *kabulyat* and if any contract between him and his landlord was to be implied, it must be taken to have been entered into so soon as the lease expired rather than at the beginning of each year. But in the subsequent case of *Ali Mamud Paramanik v. Bhagabuti Debia*, (2 C. W. N., 525) this ruling was not followed, and the tenant who held over, and whose lease had expired after the passing of the Act, was found liable to pay interest on arrears only at 12 p. c. p. a. The same was also held in another case, (*Administrator General of Bengal v. Asraf Ali*, 28 Calc., 227), in which the lease of the tenant who held over had expired before the passing of the Act. See *Dinanath Singh v. Abharam Karuni*, (1 C. L. J., 8n) and the note "*Holding over*," to sec. 51, pp. 179, 180. In *Kali Nath Sen v. Trailokhya Nath Rai*, (26 Calc., 315 : 3 C. W. N., 194), it has been held

that a stipulation for the payment of interest at an unusual and exorbitant rate, made in a contract entered into before the passing of this Act, cannot be supposed to be an incident of a tenancy which would attach to it after a sale for arrears of rent. And when in a lease the stipulation was that the lessee should pay a sum of rupees ten in default of delivery to the landlord of a certain quantity of molasses, *held*, that this was merely a personal covenant of the lessee, and it not having been notified in the sale proclamation, the auction-purchaser was not bound to pay it (*Raj Narayan Mitra v. Panna Chand Singh*, 7 C. W. N., 203.) The breaking up of a tenure created before the Act, with the consent of the landlord does not create a new tenure and interest stipulated by the original *kabulyat* is not affected by this Sec. (*Mudhumala v. Alfazuddi* 13, C. W. N., 962).

Orissa.—In Orissa where the provisions of sec. 67 have been extended but not those of sec. 178, a contract modifying the provisions of sec. 67 as to payment of interest on arrears can be made (*Gobindu Chandra Mahapatra v. Ram Chandra Nisanka*, 13 C. W. N., 95).

This section is controlled by section 179.—The provisions of this section are rendered inapplicable to permanent *mukarari* leases by sec. 179 (*Atulya Charan Bisu v. Tulsi Das Sarkar*, 2 C. W. N., 543). This was affirmed by the Full Bench decision in *Matangini Debi v. Mukrura Bibi*, (29 Calc., 674 : 5 C. W. N., 438), in which the ruling in *Basanta Kumar Rai v. Promotho Nath Bhattacharji* (26 Calc., 130 : 3 C. W. N., 36) to the contrary effect was set aside.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit :

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Provided that interest shall not be decreed when damages are awarded under this section.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plain-

tiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Extended to Orissa, (Not., Sept. 10th, 1891).

Non-payment of cesses.—Tenants are liable to damages for neglect to pay road and public works cesses (*Sarada Prasadi Ganguli v. Prasanna Kumar Sandial*, 8 Calc., 290). This is also the case under the present law, for road and public works cesses are rent within the meaning of this section [sec. 3 (5), p. 27].

Damages in lieu of interest only up to date of suit.—The proviso to sub-section (1) provides that interest is not to be decreed when damages are awarded. The damages represent the sum which the plaintiff is allowed in lieu of interest up to the date of suit : their award does not interfere with the interest which under sec. 68 may be allowed subsequently to that date, and would certainly not prevent the Court from allowing interest from the date of decree (*Watson v. Srikrishna Bhumik*, 21 Calc., 132). Damages were disallowed in a suit in which a set-off had been claimed on account of a sum due to the defendant under a Privy Council decree (*Bharat Prosad Sahi v. Rameshwar Koer*, 8 C. W. N., 118).

Limitation.—The period of limitation in suits for arrears of rent is three years from the last day of the year in which the arrear fell due [Sch. III, Part I, art 2, (b)]. Applications for execution of decrees made under this Act, if for sums not exceeding Rs. 500, are barred, if not presented within three years of the date of the final decree (Sched. III, Part III, art. 6).

Produce-rents.

Produce-rents.

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected ; [but an order made by the Collector under this sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenant's crops.]

[(4) Every officer appointed by the Collector under sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian Penal Code, be deemed to be a public servant.]

For E. B. and A., in sub-section (3) read "a Civil Court" for "the Court".

Extended to Orissa, (Not., Sept. 10th, 1891).

The words in brackets at the end of sub-section (3) and sub-section (4) have been added by sec. 16, Act I, B. C., of 1907 and in Eastern Bengal by Act I, E. B. C., of 1908. The object of the addition to sub-section (3) is to prevent delay arising from Civil Courts passing orders for distraint and Collectors at or about the same time passing orders for appraisement in respect of the same produce. It was at first proposed that when an application for distraint had been made, the Collector should not make any order for appraisement. But it was subsequently

considered that as a distraint is made for the realization of rent due for not more than one year, and appraisement is made in respect of the produce still on the ground, there is no reason why appraisement should not proceed, although the crop is under distraint. It has therefore been provided that an order under this section shall not interfere with any order passed by a Civil Court for the distraint of the crop.

Sec. 69 is applicable upon the assumption that the rent is taken by appraisement or division : the section ceases to be applicable when there is a *bona fide* dispute as to the character of the holding itself (*Mir Tapurah Hossein v. Gopi Narayan*, 7 C. L. J., 251).

Division or appraisement.—Produce rents are collected on two systems—called the *agorebatāi* and *danabandi* systems. According to the former, the produce is divided between the landlord and tenant. According to the latter, the outturn of the crop and its value are appraised, and the tenant pays the landlord his share either in grain or in money as may be agreed on. The two systems are described in a letter from the Commissioner of Patna to the Board of Revenue, No. 1130 of the 21st August, 1858, as follows. Under the *agorebatāi* system “the landlord employs men,” it is said, “to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure the crop is cut and threshed by the raiyat under the superintendence of the *samindar’s* servants, and the produce divided on the threshing-floor ; but it is also matter of arrangement between the parties in this case whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing-floor of the raiyat’s village, or at some other place more convenient to the *samindar*.” Under the *danabandi* system, it is said, “when the crop is ripe, the *patwari*, the *gomastha*, the *amin*, a *jareebkush* or measurer, a *salis* or arbitrator, *navisinda* or writer” and the *jet* raiyats (head raiyats) “of the village, with the raiyat himself, proceed to the field in which the crop is growing. The *salis* first makes an estimate of the produce, the *amin* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the raiyat cuts a *collah* where the crop is thinnest ; the *samindar’s* people cut another, where it is heaviest. The produce is threshed out, mixed together, and weighed, and the produce of the whole field is estimated from this sample. A memorandum of the result, called a *danubandi*, is made out by the *patwari* and his writer, and signed by those present. The raiyat is then at liberty to cut and store his grain. The *patwari* next prepares a paper, called a *behree*, showing the amount of grain in the possession of the raiyat, and the respective shares of the *malik* and the raiyat, and sends for the *malik’s* share, which the raiyat either pays

in grain or money, as may have been agreed upon. If the agreement is to pay in money, the *gomastha* writes to the *amlah* of the surrounding villages for the *nirik* or market rate, which is returned on the back of his letter, and an average is then struck. It will thus be seen the accounts of the estimate of the crop and its weightment form the chief evidence in these *bhaoli* cases, and that a *jamawasil* account is of comparatively little use."

Officers appointed to discharge the functions of a Collector.—By a notification, dated 21st April, 1886, published in the *Calcutta Gazette* of the 28th idem, Part I, p. 466, all officers in charge of sub-divisions were invested with the powers of a Collector for the purpose of discharging the functions of a Collector under sections 69 to 71 of this Act. By a notification, dated 28th May, 1886, published in the *Calcutta Gazette* of the 2nd June, 1886, Part I, p. 652, the Deputy Collector of Howrah, and by a notification, dated the 4th May, 1893, published in the *Calcutta Gazette* of the 5th Dem, Part I, p. 274, the Deputy Collector attached to the *sadar* station of Gaya, were invested with the powers of a Collector for the purpose of discharging the functions referred to in these sections. See note, p. 41.

Collector a "Court." Officer appointed by him not a "public servant."—A Collector acting under this and the following section is a "Court" within the meaning of sec. 195 of the Criminal Procedure Code, and his sanction is necessary to the prosecution under secs. 465 and 471 of the Penal Code of tenants who had filed rent receipts alleged to be forgeries in certain appraisement proceedings before him (*Raghubans Suhai v. Kokil Singh*, 17 Calc, 872). But a person nominated by the Collector under this section for the purpose of making a division of crops between the landlord and tenant is not a "public servant" within the meaning of section 186 of the Penal Code (*Chattar Lall v. Thakur Prasad*, 18 Calc., 518). Sub-section (4) sets aside this ruling in the province of Bengal.

Collector not empowered to decide disputes as to nature of tenancy.—Neither this nor the following section gives the Collector power to decide disputes as to whether the tenancy is a *bhaoli* one, or one held on a money rent. When there is a *bona fide* dispute as to whether rent is *bhaoli* or *nagdi*, a Deputy Collector has no jurisdiction to proceed under secs. 69 and 70 (*Nukheda Singh v. Ripu Mardan Singh*, 4 C. W. N., 239).

A co-sharer landlord cannot apply for appraisement or division.—An application under s. 69 cannot be made by some only of a body of landlords, such an application being authorized by the pro-

visions of the Bengal Tenancy Act and not by those of the Civil Procedure Code (*Nukheda Singh, v. Ripu Mardan Singh*, 4 C. W. N., 239.)

No stamp duty leviable.—Art. 4, Sched. II, Act I of 1879, exempts from stamp duty an appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

Notice.—The Collector is apparently not bound to give the opposite party any notice before making an order under this section, though under section 70, sub-section (2) the officer appointed to make an appraisement or division must give the opposite party notice of the time and place at which the appraisement or division will be made ; but it would seem desirable that in ordinary circumstances he should do so.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors [if any], and the procedure to be followed in making the appraisement or division and the officer shall conform to the instructions so given.

Procedure
where officer
appointed.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made ; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

Extended to Orissa, (Not., Sept. 10th, 1891).

Sub-section (5).—Until a Collector passes a final order under the sub-section, either the landlord or the tenant can institute a suit in the Civil Court for the purpose of having decided the questions at issue between them, and the fact of an application having been made to the Collector under sec. 69 will not be a bar to the prosecution of such a suit. “The jurisdiction of the Civil Court is superior to that of the Collector under secs. 69 and 70 of the Bengal Tenancy Act, and, so long as no final order has been passed by the Collector under those sections, it is quite competent to the Civil Court to proceed with a suit involving the decision of the same question, and, if necessary, to direct the Collector to stay his hand; and there is nothing in the Bengal Tenancy Act to show that the provisions of the Civil Procedure Code relating to the taking charge of property in dispute for its preservation and to the appointment of Receivers are not applicable under sec. 143 of that Act to suits between landlord and tenant” (S. As., Nos. 1560 to 1582 and 1808 to 1810 of 1888, decided by Banerjee and Rampini, JJ., 22nd July, 1889). The order of a Collector passed under sec. 70 (5) is final only when the proceedings are between landlord and tenants. As between tenants and third parties, his decision is not final, and a suit will lie for establishment of title and for recovery of the crops (*Chhedi v. Chedan Mugar*, 1 C. L. J., 52 n : 32 Calc., 422).

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive pos-

session of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

Extended to Orissa, (Not, Sept. 10th 1891.)

Penalties for interference with the produce—Under sec. 186 (1) (c), if any person otherwise than in accordance with this Act or some other enactment for the time being in force, except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. And under section 186 (2), any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Suit against a depositary.—In the course of proceedings under sections 65 and 70 of this Act, the landlord's share of the produce was deposited with two independent persons, who executed a receipt, agreeing to deliver it up, whenever called on to do so. Subsequently, the landlord applied to the Collector for his share of this produce, and one of the depositaries appeared and stated that the whole of the produce, excepting 40 maunds, had been destroyed by rain. On the Collector declining to give the landlord any relief, he instituted a suit against the depositaries in the Civil Court for the value of the

produce deposited with them, and it was held (1) that the receipt executed by the defendants established privity between them and the plaintiff, and (2) that when a plaintiff seeks relief in the Civil Court not against his tenant, but against a third party, a depositary or bailee, there is nothing in sections 69 and 70 to bar his suit (*Jagu Singh v. Chua Singh*, 22 Calc., 480).

Suits for produce rents.—Arrears of produce rents can be sued for (*Krishna Bandhu Bhattacharji v. Rotish*, 25 W. R., 307) and such suits lie in the Civil Court and not in the Small Cause Court (*Shoma Mehta v. Rajani Biswas*, 1 C. W. N., 55; *Krishna Bandhu v. Rotish*, 25 W. R., 307; *Tazuddin v. Ram Prasad Bhagat*, 1 All., 217). See notes pp. 27, 198. The damage to the plaintiff is the value of the crops at the time they were due and not subsequently (*Lachman Prasad v. Hulash Mukhan*, 2 B. L. R., App., 27 : 11 W. R., 151). A *khasra* or appraisal of the crop, though not made in the presence of the tenant (a *danabandi* tenant) is evidence against him, if he had notice when the *khasra* was about to be made (*Hari Navain Singh v. Beljit Jha*, 24 W. R., 125). A landlord who refuses to accept rent in kind when it is offered to him on the ground that he is suing for a money rent, cannot on the dismissal of his suit come into Court again and sue his tenant for the value of what he refused when it was proffered (*Narain Gir v. Gaur Saran Das*, 23 W. R., 368). In a suit for arrears of produce rent in which interest was claimed under a custom it was held that the plaintiff not having proved the alleged custom, secs. 54 (3), 67 and 68 were applicable, and the plaintiff was not entitled to get interest as claimed, but damages at the rate of 25 p. c. (*Apurba Krishna Rai v. Ashutosh Datta*, 8 C. W. N., cclxxxiv).

Liability for rent on change of landlord or after transfer of tenure or holding.

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Extended the Orissa, (Not., Sept. 10th, 1891).

Rent in secs. 72 to 75 includes money recoverable as rent.—Under sec. 3 (5), the word “rent” in secs. 72 to 75 includes also money recoverable under any enactment for the time being in force as rent. See note, p. 30. Where a landlord transferred his interest to another person and the tenant got notice of the transfer from the transferor, but not from the transferee : *held*, that payments of rent made to the transferor after such notice were not valid payments, and the transferee could claim them from the tenant. The object of sub-section (2) of s. 72 is to relieve the transferee landlord of the necessity of giving notice to each tenant : it does not make such notice a necessary notice (*Nobin Chandra Chaudhuri v. Surendra Nath Ghosh*, 7 C. W. N., 454).

Landlord's right to transfer his interest.—A landlord can create a tenure intermediate between him and his tenants, but they are not bound to pay rent to the tenure-holder, till they have received notice of the assignment (*Mansur Ahmud v. Asizudin*, W. R., Sp. No., 1864, Act X, 129). A parcel of land being a portion of the land composing a *patni* can be sold in execution of a decree against the *patnidar* and the tenant will be liable to pay rent to the purchaser after receipt of notice of the purchase (*Mudhab Ram v. Doyal Chandra Ghosh*, 2 C. W. N., 108 : 25 Calc., 445). But a landlord cannot grant two leases of the same interest in the same property (*Kallam v. Panchu Mandal*, 11 W. R., 128). If a raiyat without notice of the assignment of his landlord's interest pays his rent to the former landlord, the transferee cannot recover from him rent so paid (*Nil Mani Rai v. Hills*, 4 W. R., Act X, 38). This is in accordance with the provisions of sec. 50 of the Transfer of Property Act, which, however, require that the rent should be paid in good faith to the person of whom the tenant in good faith held the property. The element of good faith does not seem to be required by the terms of sec. 72. If tenants after having had notice of the purchase of a *zamindari* choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their own peril, and cannot plead such payments in answer to a suit for rent by the new owner (*Collector of Rajshahye v. Harasundari Debi*, W. R., Sp. No., 1864, Act X, 6). The same rule applies when tenants continue to pay rent to co-sharer landlords

after notice of the acquisition by the third party of an interest in the land (*Asim v. Ram Lal Shaha*, 25 Calc., 330).

Rent paid in advance.—A tenant who pays rent to his landlord in advance is not, under the terms of this section, entitled to credit from the transferee for this payment. The landlord may sue both the tenant and the transferee for the rent (*Madan Mohan Lal v. Holloway*, 12 Calc., 555). But in one case decided under the former law it was ruled that an auction-purchaser with notice of a payment in advance, made by the tenant to the former proprietors, of rent due for a period subsequent to the date of purchase, is bound by such payment (*Ram Lal Saha v. Jogendra Narain Rai*, 18 W. R., 328). In another case it was held that a purchaser of land is bound by a contract between his vendor and a tenant, which is secured by the rent of the land remaining in the hands of such tenant, the contract being in the nature of an assignment of rent of the property sold (*Churaman Singh v. Patu Kuar*, 24 W. R., 68).

Back rents.—Back rents may be assigned (*Harinath Mazumdar v. Moran & Co.*, W. R., Sp. No., 1864, Act X, 127), but the assignment is not valid against the tenant unless he has had express notice, or is a party to or otherwise aware, of the transfer (secs. 131 and 132 of the Transfer of Property Act). Under the provisions of sec. 135 of the Transfer of Property Act, a debtor is discharged by paying to the creditor before judgment the price and incidental expenses of the purchase of the debt (*Muchiram Barik v. Ishan Chandra Chakravartti*, 21 Calc., 568). Suit for arrears of back rents, though held under the old law to be suits for rent (*Krishna Kumar Mitra v. Mohesh Chandra Banurji*, W. R., Sp. No., 1864, Act X, 3; *Harinath Mazumdar v. Moran & Co.*, W. R., Sp. No., 1864, Act X, 127; see *contra*, *Bhagwan Sahai v. Sangeshar Chaudhri*, 19 W. R., 431), would not seem to be suits for rent under the present Act. They are suits for debt only; for rent under sec. 3 (5) is whatever is payable by a tenant to his landlord and the assignee of the back rents cannot have been the landlord of the tenant at the time the rents accrued. See note to sec. 66 p. 228. Under sec. 148 (h) execution of a decree for arrears of rent cannot be taken out by an assignee, unless the landlord's interest in the land has become and is vested in him (*Dinonath De v. Golap Mohini Dasi*, 1 C. W. N., 183).

Service of notices.—Sub-section (1) of sec. 72 does not require that the notice therein contemplated should be served in any particular manner. It does not require to be served in the manner prescribed by rule 3, Chap. I of the Govt. rules under the Tenancy Act (*Madhab Ram v. Doyal Chandra Ghosh*, 25 Calc., 445; 2 C. W. N., 108). A special

rule has been passed for the service of the general notice referred to in sub section (2) of this section (see rule 33, Chap. V of the Govt. rules, Appendix I).

Apportionment of rent.—Under sec. 37 of the Transfer of Property Act, when, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall in the absence of a contract of the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in such property, provided the duty can be severed and the person on whom the duty lies has had reasonable notice of the severance. But the provisions of this section do not apply to leases for agricultural purposes, unless and until the Local Government by notification in the official Gazette so directs. No such notification has as yet been issued, so that there is as yet no definite legal provision for the apportionment of rents, when the interests of the landlord are transferred to more than one person. Under the Estates Partition Act, (V, B. C., of 1897,) when a revenue paying estate is being divided, if it be necessary to divide tenures or holdings, rents can be apportioned between the different proprietors by the Revenue Officer entrusted with the duty of making the partition (see secs. 81 and 83, Act V, B. C., of 1897). In all other cases recourse must be had to a civil suit and the rents will then be apportioned by the Court, though there is no express law on the subject to guide it. There is no provision in this Act for the apportionment of rent, which is “required by the necessities of mankind, the exigencies of families and the demands of business.” The absence of such provision has always been “a fruitful source of litigation and harassment to raiyats”. (Rent Commission Rept., Vol. I., p. 57, para 127).

There are many cases under the old law, in which it has been ruled that the Civil Courts can apportion rents on a suit being brought for the purpose. Thus, in the case of *Beni Madhub Ghosh v. Thakur Dass Mandal* (B. L. R., F. B., 588 : 6 W. R., Act X, 71) Peacock, C. J., said :—“It appears that the tenant originally held under four brothers of whom Gobind Mani’s husband, Sri Krishna, was one. They were a joint family, and the tenant was paying rent to them jointly. I should have thought myself, though it is unnecessary to express any decisive opinion on the point, that where rent is received by a joint family, the tenant is not liable to be sued by each member of the joint family for a separate share of rent. But if the estate is severed by partition, and, instead of being a joint estate, becomes separate estates, then the rent would be apportioned in respect of the several allotments, and each

member would be entitled to sue for his separate share of the rent in respect of the lands allotted to him on partition." Then in *Gopanand Jha v. Govind Prasad*, (12 W. R., 109) it was ruled that when a lessee is evicted by title paramount to that of his lessor, an apportionment of the rent may take place in an action brought for the purpose, and that the onus is on the lessor to show what is the fair rent of the land out of which the tenant was not evicted. Again, in *Srinath Chandra Chaudhri v. Mohesh Chandra Bandopadhyaya*, (1 C. L. R., 453), it appeared that Rajah Gopal Singh Deb was the proprietor of seven *mauzas* which were let in *patni*. Three of them were bought at a sale in execution of a money decree against Rajah Gopal Singh Deb by the plaintiffs and four by the defendants, and the plaintiffs sued the *patnidars* for the proportionate amount of the rent due to them and for the determination of that amount, making the purchasers of the remaining four *mauzas* parties defendant; and it was held that the suit was properly framed. In *Annoda Charan Rai v. Kali Kumar Rai*, (4 Calc., 89), the Court (Garth C. J., and McDonell, J.,) said:—"If *ijmali* property is let to a tenant at one entire rent, we think it clear, upon principle and authority, that the rent is due in its entirety to all the co-sharers, and that all are bound to sue for it; and that no co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not. Of course, if the land demised ceases to be *ijmali*, and one portion of the divided area becomes the property of A, whilst another becomes the property of B, it is necessary that an apportionment of the rent should take place; and then, in order to obtain such an apportionment, it would be quite proper that either A or B should bring a suit against the tenant for so much of the rent as he considers his proper portion, making B or A, as the case may be, defendant to the suit. But here there has been no division of the area of the property. The area is entire, the rent has always been paid by the tenant in its entirety, and the title of the other co-sharers remains *ijmali*." The suit was accordingly dismissed. In *Ishar Chandra Datta v. Ram Krishna Das*, (5 Calc., 902; 6 C. L. R., 421), it was held by a Full Bench, "that a sale of a share in a tenure, which has been let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose. If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure, and an apportionment of the rent, he must give the tenant due notice to that effect, and, then, if an amicable apportionment

of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit." It is impossible upon principle, it is further said, "to distinguish cases, when a tenure is sold privately, from those when it is sold by public auction ; or, on the other hand, to distinguish cases, when a tenure is served by different portions of its area being sold to different persons, from those when it is sold to different persons in undivided shares. In all cases of this kind, the entirety of the joint interest should be considered as severable at the opinion of the purchaser, and it would lead to most inconvenient results, and to the depreciation of the property thus sold in different lots, if the purchasers of such lots were compelled to collect their rents in one entire sum conjointly with one another, or with the owner of the unsold shares or portions." In *Durga Prasad v. Ghosita Ghoria*, (11 Calc., 284), the plaintiff held a *jote* under the defendant and his co-sharers, who were jointly in possession of an estate paying revenue to Government. A *batwara* of this estate was effected in 1877, and out of the plaintiff's *jote* lands, a plot of land fifteen *collahs* in extent, fell to the *putti* or divided share of the defendants. The rate of rent according to the plaintiff at which he held the land while the estate was joint was Rs. 4 per *bigha*, but on partition the defendants demanded and enforced payment of Rs. 5 on account of the fifteen *collahs* plot that fell to their *putti*. The plaintiff then sued under s. 19 of Act VIII, B. C., of 1869 for abatement of rent, and obtained a decree. In second appeal the decree was affirmed, but it was pointed out that the suit was not properly one for abatement, but one for apportionment of rent, and for a declaration that after *batwara* the share of the rent which the plaintiff was liable to pay to the defendant was as stated by the plaintiff. When one co-sharer had obtained a decree for his share of the rent separately, and the other co-sharers served notices and sued for apportionment of rent, it was held that there was no reason why the rent should not be apportioned, provided the notice was sufficient (*Banwari Lal Mitra v. Kuladananda Chaudhuri*, 1 C. W. N., clxxxviii). A decree had determined that lands leased in *mukarari* to a lessee with a fixed rent thereon were less in extent than they were specified to be in the *pattahs* that comprised them, the lessors not having title to the whole, and the lessee had obtained possession of the less estate. The revenue paying *mehal* within which were the lands subject to the *mukarari*, such lands being shares of *mauzahs* therein, was afterwards sold for arrears under Act XI of 1859. The purchaser at that sale was sued by the *mukararidar* to make good her incumbrance under sec. 54 of the Act. The lease was maintained by the decree that followed, but only as to part of

the shares specified in the *pattahs*. In a suit for mesne profits brought by the lessee against the purchaser's heir, who filed a cross-suit against her for rent, it was held that as the lessee had not proved that she, having had possession under the lessee, had been dispossessed by the purchaser, there had not been an eviction in the proper sense of the word. But when in her suit for possession, part only was decreed to her, and she was precluded by the result from getting a substantial part, her position was the same as if she had been evicted. She, therefore, had the same equity for an apportionment as if she had been evicted (*Imambandi Begum v. Kamleswari Prasad*, 21 Calc., 1005 : L. R. 21 I. A., 118). Where the act of the landlord is not a mere trespass, but something of a graver character interfering substantially with the enjoyment by the tenant of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction, and if such interference be committed in respect of even a portion of the property, there should be no apportionment of rent, when the whole rent is equally chargeable upon every part of the land. But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment (*Dhanpat Singh v. Mahomed Kazim Ispahain*, 24 Calc., 296). If the lease under which the tenure is held reserves rent at a certain rate per *bigha*, it cannot be said that each *bigha* is separately assessed and separately chargeable with rent ; so if the landlord dispossesses the tenant from some of the lands of the tenure, he cannot claim rent for the lands that remain in the tenant's possession (*Hari Kumari v. Purna Chandra Surbagya*, 28 Calc., 188). When the plaintiffs who are joint landlords, have in suits separately instituted by them against the tenant defendant asked for apportionment of rent and for recovery of rents due on such apportionment, and all the parties interested have been made parties to the suits, there is no reason why the plaintiffs should not have the rents apportioned, and the apportionment may take place in respect both of the arrears alleged to be due and the future rent (*Rajnarain Mitra v. Ekadasi Bag*, 27 Calc., 479 : 4 C. W. N., 494).

Apportionment of cesses.—Where a Collector has under the Cess Act determined the annual value in respect of certain land and a portion of that land is subsequently granted as a tenure to an under-tenant and the Collector has not separately assessed the annual value of the land of the tenure so created, the under-tenant is nevertheless liable for any cesses in respect of that land. In such a case it is competent to a Court to ascertain the annual value of the land comprised in the defendant's tenure, so as to ascertain the amount due for cesses (*Hari Mohan Dalal v. Ashutosh Dhur*, 4 C. W. N., 776).

All co-sharers must be made parties.--In a suit for apportionment of rent, the plaintiff must make all his co-sharers parties, otherwise the suit is badly framed and should be dismissed (*Ishar Chandra Datta v. Ram Krishna Das*, 5 Calc., 902 : 6 C. L. R., 421 ; *Abhai Govind Chauduri v. Hari Charan Chaudhri*, 8 Calc., 277). A tenant held certain land under a lease which provided that after the land had been fully brought under cultivation, there should be a measurement and an adjustment of the rent finally and once for all, and after that there should be no further change in the rent. One of the landlords then brought a suit alleging that the land been fully brought under cultivation, and that there had been a measurement, and, therefore, she prayed for an adjustment of her share of the rent. It was held that on the terms of the lease the final adjustment of the rent could be obtained only by a suit brought by all the landlords, or by a suit by some of them, if the others refused to join, but in that case the suit must be for the adjustment of the entire rent and all the necessary parties must be properly before the Court (*Bindu Bashini Dasi v. Piari Mohan Basu*, 20 Calc., 107).

Separate payment of rent not conclusive evidence of apportionment.--When a tenant has agreed with his landlords to pay a certain rent for his whole holding, the fact that he has paid each landlord his proportionate share of the rent is not conclusive, but merely presumptive evidence that the rent has been apportioned between the landlords (*Anu Mandal v. Kamaludin*, 1 C. L. R., 248).

Accrual of rent.--Under sec. 36 of Act IV of 1882, in the absence of a contract or local usage to the contrary, rent shall, on the transfer of the interest of the person entitled to receive it, be deemed as between the transferor and transferee to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof. But, according to the ruling in *Satyendra Nath Takur v. Nilkanth Sing*, (21 Calc., 383), rent under this Act "should ordinarily be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or the general law in the absence of such contract, as laid down in sec. 53 of the Bengal Tenancy Act." See notes to sec. 53, p. 196. When a landlord has brought a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of the confirmation of the sale, and the arrears accruing due between the date of sale and the date of confirmation of sale must be treated as arrears of rent payable by the out-going tenant, whose interest does not cease till the sale is confirmed (*Karunamai Ranurji v. Surendro Nath Mukhurji*, 2 C. W. N., cccxxvii).

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Liability for rent after transfer of occupancy holding.

Extended to Orissa, (Not., Sept. 10th 1891).

Application of the section.—The provisions of this section would seem to be applicable only to such occupancy rights as are transferable by local usage (see note to sec. 26, pp. 120, 121). The transferee is of course not personally liable for rent which accrued due before he became the owner (*Rash Bihari Bandopadhyay v. Piari Mohun Mukhurji*, 4 Calc., 346). In no case can an occupancy raiyat transfer a share of his holding without the consent in writing of his landlord (sec. 88). An occupancy raiyat cannot now sue his landlord for registration of his name in the landlord's *serishtah* and for the striking off his transferor's name: for there is no provision in the Act compelling a landlord to register any tenant's name in his books. An occupancy raiyat who has purchased an occupancy holding which is transferable by custom may sue to obtain a declaration to this effect under sec. 42 of the Specific Relief Act; but the joint liability of the transferor and transferee for the rent will continue till the notice referred to in section 73 has been given in the prescribed manner (*Ambika Prasad Chaudhri v. Keshri Sahu*, 24 Calc., 642).

Plaintiff purchased certain jotes from defendants, 1 and 2, and agreed to pay the rents due to the landlord up to the time of sale. They did not pay, and the landlord sued the plaintiff for rents due for the period anterior as well as subsequent to the date of sale. In execution of the landlord's decree, 51 *bighas* were sold: *held*, that the plaintiff was entitled to recover from the defendants the sum due as arrears from them, to pay off which the 51 *bighas* had been sold (*Kutubali Shah v. Azizulla Mandal*, 7 C. W. N., 905).

Service of notice.—The rules framed by the Local Government for the service of the notice referred to in this section are to be found in rules 34 and 35 Chap. V of the Govt. rules, Appendix I.

Receipt of rent from transferee—It was held by a Full Bench under the former law that when a landlord had received rent from the transferee and was fully aware of the transfer of a holding, which was by custom transferable without the consent of the landlord, the transferor's

connection with the holding had come to an end and a suit against him for rent did not lie (*Abdul Aziz v. Ahmed Ali*, 14 Calc., 795). The same would seem to have been the law with regard to holdings not transferable by custom, for the receipt of rent from the transferee was regarded as evidence not only of knowledge of the transfer, but of consent thereto (See note to sec. 26, pp. 125, 126).

Illegal cesses, &c.

74. All impositions upon tenants under the denomination of *abwab*, *mathat*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Illegal cesses,
&c.
Abwab, &c.,
illegal.

Abwabs.—Section 54 of Reg. VIII of 1793 laid down that all existing *abwabs* should be consolidated with the *usal jama* into one specific sum, and sec. 55 of the same Regulation prohibited the imposition of any new *abwab* or *mathat* upon the raiyats upon any pretence whatever upon pain of a penalty of three times the amount imposed for the entire period of the imposition. Section 3 of Reg. V of 1812 altered certain of the provisions of Reg. VIII of 1793, but declared that nothing therein contained should be construed as sanctioning or legalizing the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mathat* or any other denomination. Section 10 of Act X of 1859 and section 11 of Act VIII, B. C., of 1869 provided that under-tenants or raiyats, if any sum was exacted from them in excess of the sum specified in the *puttah*, whether as *abwab* or on any other pretext, were entitled to recover damages not exceeding double the amount so exacted. But there are many decisions of the High Court in which these provisions have not been strictly given effect to. Thus, in *Jiatullah Paramanick v. Jagadindro Narain Rai*, (22 W. R., 12), it was ruled that if a *zamindar* demands a cess over and above the original rent, and the raiyat consents and contracts to pay it, this demand and the old rent form a new rent lawfully claimable under the contract. Then, in *Budhna Orawan Mahtun v. Jogeshar Doyal Singh*, (24 W. R., 4), it was said that certain payments which were not so much in the nature of cesses, as of rent-in-kind, and which were fixed and uniform, and had been paid by the raiyat from the beginning, according to local custom, were not illegal cesses. In *Nobin Chandra Rai v. Guru Govinda Mazumdar*, (25 W. R., 8), it was laid down that a *tahsildar* would be bound to account to the landlord for payments for *bhika*, or payments

made by tenants in excess of the rents due from them, if paid voluntarily and not "exacted" from them. See also *Bholunath Mukhurji v. Brojo Mohan Ghosh* (14 W. R., 351). A landlord's agent is liable to pay to the landlord any sums collected by the agent from the tenants as *kharch* or illegal cesses (*Nagendra Bala Dasi v. Gurudoyal Mukhurji*, 30 Calc., 1011 : 7 C. W. N., 535). In *Serajganj Jute Co. v. Torabdi Akund*, (25 W. R., 252), it was said that where a raiyat has for many years been paying a *tallab beshi* of 2 as. in each rupee, in addition to the *asal jamu* of the holding and the two payments have been incorporated in time, and have actually formed the subject of a single receipt, which the *zamindar* challenged the raiyat, but which the raiyat failed to produce, and where a raiyat, for the purpose of preventing disputes with his landlord, and for securing his own interests, has agreed to make a definite payment to his landlord in addition to his rent, such additional payment cannot be treated as an illegal cess, for the law favours such arrangements and provides for their being enforced : and in *Mahomed Faiz Chaudhri v. Jamu Ghazi*, (8 Calc., 730), it was ruled that a condition in a lease, that a tenant will pay to the landlord collection charges, can be enforced, if the condition is definite and certain in its nature and forms part of the consideration for the lease.

The whole subject was considered in the Full Bench case of *Chultan Mahtan v. Tilakdhari Singh*, (11 Calc., 175), in which it was decided that, where it is not actually proved that *abwabs* have been paid, or have been payable, before the time of the Permanent Settlement, a landlord is not legally entitled to recover them as against his raiyats, even assuming that by the custom of the estate the raiyats and their ancestors before them have for a great number of years paid such *abwabs*. In this case, Garth, C. J., said :—"I consider that the Regulation of 1793, as well as the Rent Law of 1859, intended to put an end to the *abwab* system, and to render them illegal. It has been argued that to abolish this system is contrary to the wishes of both landlords and raiyats, and I believe that to be true. Landlords often find it a convenient means of enhancing their rents in an irregular way, and the raiyats, as a rule, would far rather submit to pay *abwabs* than have their *asal* rent increased. But the system appears to me to be clearly illegal, and I consider that the Civil Courts should do their best to put an end to it." Mitter, J., in the same case observed :—"Under the provisions of the Regulations and Acts cited above, it seems to me that a contract for the payment of *abwabs* is unlawful, and is not enforceable by law. It has been contended before us that a claim for the recovery of the *abwabs* existing before the Permanent Settlement is enforceable, notwithstanding these provisions, because sec. 54 of Reg. VIII of 1793 contained only a direction

for the consolidation of the *abwabs* with the *asal jama* ; but no penalty was attached to an omission on the part of the landholders to act according to that direction. But it seems to me that this contention, is not correct, because sec. 61 of the said Regulation, in my opinion, provided the penalty in question—that penalty being the non-suiting of the claim for the recovery of the *abwabs*.” But in a later case (*Padmanand Singh v. Baij Nath Singh*, 15 Calc., 828), a Division Bench (Tottenham and Ghose, JJ.,) ruled that “what is and what is not an *abwab* must depend upon the circumstances of each particular case in which the question arises.” It further held that where, by a *kabulyat*, dated 1869, a defendant, as holder of a *mukarari* tenure, agreed to pay a certain fixed sum as rent, and also certain sums designated *tehwari* and *salami*, they were not illegal cesses within the Full Bench ruling of *Chuttan Mahtan v. Tilakdhari Singh*, not being uncertain and arbitrary in their character, but specific sums which the tenants agreed to pay to the landlords, and the payment of which, no less than the payment of the rent itself formed part of the consideration upon which the tenancy was created, and were in fact, part of the rent agreed to be paid, although not so described ; they were, therefore, recoverable under Regulation V of 1812. Subsequently, the case of *Chuttan Mahtan v. Tilakdhari Singh*, was appealed to their Lordships of the Privy Council, and the judgment of the High Court was affirmed (*Tilakdhari Singh v. Chuttan Mahtan*, 17 Calc., 131 : L. R., 16 I. A., 152). Their Lordships of the Privy Council said :—“The payments are described in the plaint as old usual *abwabs* ; and they are also described as *abwabs* in the old *zamindari* accounts. It appears to their Lordships that the High Court was perfectly right in treating them as *abwabs* and not as part of the rent. Unquestionably they have been paid for a long time ; how long does not appear. They are said to have been paid according to long-standing custom. Whether that means that they were payable at the time of the Permanent Settlement or not, is not plain. If they were payable at the time of the Permanent Settlement, they ought to have been consolidated with the rent under s. 54 of Reg. VIII of 1793. Not being so consolidated, they cannot now be recovered under s. 61 of the Regulation. If they were not payable at the time of the Permanent Settlement, they would come under the description of new *abwabs* in s. 55 ; and they would be in that case illegal.” The subject was further considered in the case of *Radha Prasad Singh v. Bal Kuar Koori*, (17 Calc., 726), and it was held that certain sums sued for under the head of *sarak*, *neg* and *kharach* were *abwabs*, and were therefore not recoverable, and that all additions to the actual rent are illegal and any agreement to pay them is void. In this case it was pointed out by Petheram, C. J., that the case of *Padmanand Singh v. Baij Nath Singh*, must be regarded as overruled

by the Privy Council in *Tilakdhari Singh v. Chultan Mahtun*. The words "all stipulations and reservations for the payment of such" refer to both past and future stipulations (*Jotindro Nath Tagore v. Chandra Nath Safui*, 6 C. W. N., 360). Under sec. (2) cl. (4), of this Act, the landlord cannot now recover the *abwabs* which he could not recover under the old law (*Apurna Charan Ghosh v. Karam Ali*, 4 C. L. J., 527 : 10 C. W. N., 527). In estimating the value of a property in an application under s. 311, *abwabs* should not be taken into account (*Shashi Bhusan Sadhu v. Ahmed Hossen*, 7 C. W. N., 439). A fixed amount mentioned in a lease as payable annually for collection charges in addition to rent, the total being described as the *jama* and forming the consideration of the lease is not an *abwab*, but is a part of the rent and recoverable as such (*Radha Charan Rai v. Golak Chandra Ghosh*, 31 Calc., 834 : 8 C. W. N., 529).

Abwabs held illegal.—The following *abwabs* have expressly been held to be illegal ; (1) *Zabita batta*, or customary levy (*Radha Mohan Sarma v. Ganga Prasad Chakravartti*, 7 S. D. A., Select Repts, 166). (2) *Mihmani*, guest money, and *nazarana*, presents (*Madho Singh v. Bidyand Singh*, S. D. A., Repts., 1848, 442) ; (3) *Bardana*, *batta*, and *kotwali* tobacco (*Chakan Sahu v. Rup Chand Pandi*, S. D. A., Repts., 1848, 680) ; (4) *Chunda*, subscription, (*Meliss v. Meghnath Thakur*, S. D. A., Repts., 1852, 4) ; (5) *Rasum Kazza*, or *Kazi's* fees (*Lakhi Debi Chaudhrain v. Ahta*, S. D. A. Repts., 1852, 552) ; (6) *Najai*, a tax assessed upon the cultivators present, to make up for any deficiency arising from the death or disappearance of their neighbours (see Wilson's Glossary, p. 363), (*Dhali Paramanik v. Anand Chandra Tolapatro*, 5 W. R., Act X, 86) ; (7) A cess of so much *gur* on every maund manufactured (*Sonum Sukal v. Ilahi Baksh*, 7 W. R., 453) ; (8) A cess for grazing cattle on a *jotedar's* own *jote*, but within the *zamindar's* estate (*Bhaghirath Shikdar v. Ram Narain Mandar*, 9 W. R., 300) ; (9) *Rakumat*, or miscellaneous items, (*Arjun Sahu v. Anand Singh*, 10 W. R., 257) ; (10) *Parabi* or festival cess (*Kamala Kant Ghose v. Kanu Mahomed Mandal*, 11 W. R., 395 : 3 B. L. R., A. C., 44 ; *contra*, *Jagdish Chandra Biswas v. Tarikullah Sarkar*, (24 W. R., 90) ; (11) *Patwarian* or *patwari's* fee (*Barmah Chaudhri v. Srinand Singh*, 12 W. R., 29) ; (12) *Purvi bhika*, a sum collected on the occasion of the *annaprāsana* ceremony (the first eating of rice after birth) of the *zamindar's* son (*Nobin Chandra Rai v. Guru Gobind Sarmah*, 14 W. R., 447) ; (13) *Patwari's* wages, *sidha*, or daily allowance, and *pasbari's* or watchman's wages (*Mengur Mandar v. Hari Mohun Thakur*, 23 W. R., 447) ; (14) *Dastur*, *hajatanā*, *sonari*, *batta*, *mal*, *batta company*, *neg*, or landlord's due, *pansera*, or harvest fee, *bodhwara*, or fee for the wages

of village-watchmen, *pohwi*, or fee for the wages of the priest, *nocha*, or fee for the wages of village-establishment, *mangan*, a cess of 30 seers of the produce per plough, and *sidha*, or patwari's dues (*Chultan Mahtan v. Tilakdhari Singh*, 11 Calc., 175); (15) *Sarak*, *neg*, *kharach* and *battu* (*Radhu Prasad Singh v. Bal Kuar Koeri*, 17 Calc., 726); (16) *Bhet* and *begar*, presents and gratuitous labour, (S. A. No. 47 of 1893, decided by Norris and Banerjee, JJ., March 19th, 1894; *Apurna Charan Ghose v. Karam Ali*, 4 C. L. J., 527 : 10 C. W. N., 527); (17) an annual payment in lieu of certain quantities of jack fruit, bamboos and fish, when stipulated for in a clause perfectly distinct from that relating to the payment of rent, which was payable quarterly (*Krishna Chandra Sen v. Sushila Sundari Dasi*, 26 Calc., 611 : 3 C. W. N., 608); (18) an annual payment of ten rupees in default of delivery of a certain quantity of molasses (*Raj Narain Mitra v. Panna Chand*, 7 C. W. N., 203); (19) *Puja kharch*, (*Narendra Kumar Ghose v. Gora Chand* 33 Calc., 683); the payment of 3 Rupees instead of the delivery of two goats (*Gayratulla Sardar v. Giris Chandra Bhaumik*, 12 C. W. N., 175).

Batta.—Batta would seem not to be an *abwab*, if it is merely an allowance for the exchange of sicca rupees into Company's rupees, which were first introduced by Act XVII of 1835 (see S. As. Nos., 1368 to 1371 of 1886 decided by Petheram, C. J., and Ghosh, J., April 13th, 1887, and S. A., No. 1397 of 1891, decided by Macpherson, J., May 13th 1892). By Act XIII of 1836 sicca rupees ceased to be legal tender, but were receivable at public treasuries subject to a charge of 1 p. c. for recoinage. If a tenancy has been created before 1836, batta is *prima facie* not an *abwab*; but if the creation of the tenancy is of subsequent date, batta is *prima facie* an *abwab* (*Rameswar Koer v. Goburdhan Lal*, 7 C. L. J., 202; *Mir Tapura Hossein v. Gopi Narain*, 7 C. L. J., 251).

Cesses.—Road-cess and public works cesses are *not abwabs*, and a contract to pay more than the proportion payable by the tenant is legal (*Nagendra Kumar Ghosh v. Gorachand*, 33 Calc., 683; *Eastern Mortgage Co. v. Ganpat Singh*, 9 C. W. N., xxiii; *Ashutosh Dhar v. Amir Mollah*, 3 C. L. J., 337).

Dak Cess.—Dak-cess is not an illegal cess, nor would it appear to be rent according to the definition of rent contained in section 3, sub-section (5), inasmuch as it is not paid for the use and occupation of land held by the tenant. It is a cess levied by Government on *zamindars* in consideration of the conveyance by Government of the dak. Tenants are not bound to pay it in consideration of their holding land under the *zarindar*. *Zamindars* can only collect dak-cess from their tenants provided the latter have agreed to pay it to them (sec. 12,

Act VIII, B. C., of 1862). In *Bissonath Sarkar v. Sarnomoyi*, (4 W. R., 6), it was ruled that a *zamindar* was entitled under Bengal Act VIII of 1862 to reimburse himself from the *patnidar* for dak charges, if under the old law he had been in the habit of paying them. But in other cases, it was held that it depended on the terms of their leases whether *patnidars* were liable to pay dak-cess or not. (See *Saroda Sundari Debi v. Uma Charan Sarkar*, 3 W. R., S. C., Ref., 17; *Saroda Sundari Debi v. Tarini Charan Saha*, 3 W. R., S. C., Ref., 19; *Rakhal Das Mukhurji v. Sarnomoyi*, 6 W. R., 100; *Rohini Kant Rai v. Tripura Sundari Dasi*, 8 W. R., 45). Landlords cannot collect dak cess as rent. A suit for dak-cess is one of the nature cognizable by a Court of Small Causes (*Mahtab Chand v. Radha Binod Chaudhri*, 8 W. R., 517; *Ersine v. Trilochan Chaturji*, 9 W. R., 518). In *Watson v. Srikrishna Bhunik*, (21 Calc., 132), however, it was held that dak-cess was to be regarded as rent for the purposes of section 135 of the Act. Dak-cess is not an *abwab* and is recoverable as part of the consideration for the tenancy, if there is a contract for the payment of such cess (*Bijai Chand Mahtab v. Brahma Das Datta*, 1 C. L. J., 1017). See note, sec. 3 (5) p. 32. Dak-cess has now been abolished by Act IV of 1907, the Repealing and Amending (Rates and Cesses) Act which repealed Bengal Act VIII of 1862.

Chaukidar's pay.—Where a *patnidar* was by the terms of his lease bound to pay half of the pay of the village *chaukidars*, and the stipulation had been entered into between parties competent to contract and had been made for valuable consideration, it was said that the amount the *patnidar* had agreed to pay was to be paid quite as much on account of the occupation of the land as that which was expressly called the rent, and was part of the ground rent quite as much as the latter. It was, therefore, not an *abwab* and was recoverable (*Ahsanulla Khan v. Tirthabasi*, 22 Calc., 680). See note, sec. 3 (5), p. 33.

Lessees are tenants and cannot contract to pay abwabs.—

Lessees are tenants within the meaning of sec. 74 and cannot legally contract to pay *abwabs*, (S. A., 1632 of 1892, decided by Petheram, C. J., and Amir Ali J., March 7th, 1894, and S. As., 195, 196, 221-223, 225, of 1893, decided by Amir Ali and Rampini, JJ., April 19th, 1894).

Res-judicata.—When in a suit for rent, the rent claimed expressly includes an item which is objected to as an illegal cess, the mere fact that in a previous rent suit between the same parties regarding the same tenure, the defendant did not raise this plea, although he could have done so, would not in the absence of a judicial determination of the point in the previous suit, preclude him from raising it in the subsequent suit (*Umesh Chandra Maitra v. Barada Das Maitra*, 28 Calc., 17).

This section is controlled by section 179.—Section 179 of the Act which provides that nothing in this Act shall be deemed to prevent a proprietor or holder of a permanent tenure in a permanently settled area from granting a permanent *mukarari* lease, on any terms agreed on between him and his tenant is not controlled by section 74 (*Ahsanulla Khan v. Tirthabasini*, 22 Calc., 680). A stipulation for the payment of an *abwab* in a permanent *mukarari* lease is valid ; this section does not control section 179 (*Krishna Chandra Sen v. Sushila Sundari Dasi*, 26 Calc., 611 : 3 C. W. N., 608).

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent [or interest] lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees ; or when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

Extended to Orissa, (Not., Sep. 10th. 1891).

The words in brackets were inserted by s. 17, Act I, B. C., of 1907, and Act I, E. B. C., of 1908, as a consequential amendment on that made in section 67 regarding the levy of interest before the institution of a suit.

Under sec. 10. Act X of 1859, and sec. 11, Act VIII, B. C., of 1869, any under-tenant or raiyat from whom any sum was exacted in excess of the rent specified in his *pattah* or payable, was entitled to recover damages not exceeding double the amount exacted or paid. For special enactments making demands other than rent recoverable as such, see note, sec. 3 (5) pp. 30, 31.

Exacted.—The word “exacted” in this section would seem to imply nothing more than “collected after demand” (see *Ram Prasad Bhagat v. Ram Tahal Singh*, Marsh., 655). Money collected under a proceeding prescribed by law, though in excess of the due amount, is not exacted (*Chandra Moni Chaudhurnain v. Debendro Nath Rai*, Marsh., 420). Where the defendant had sub-let land to the plaintiff for the purpose of

raising crops under a contract to share the produce between them, and where the plaintiff sought to recover the value of the share of the crops which the defendant had misappropriated, it was held that the suit was not for a sum exacted in excess of the rent (*Gharibullah Pramanik v. Fakir Mohamed Kulu*, 10 W. R., 203). Sums exacted by a *tahsildar* from tenants cannot be recovered by the landlord in a civil suit (*Nobin Chandra Rai v. Guru Gobind Mazumdar*, 25 W. R., 8).

No second appeal.—A suit under this section for a sum of money claimed as an excess payment of rent exacted from a tenant is one cognizable by a Court of Small Causes, and no second appeal will lie in such a suit (*Ranga Rai v. Holloway*, 4 C. W. N., 95).

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND
TENANTS.*Improvements.*

Improvements.
Definition of
"improvement."
76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;
- (b) the preparation of land for irrigation ;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable ;

- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;
- (e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ; and
- (f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

This section is founded on, and its terms follow closely those of, sec. 4, Act XIX of 1883 (The Land Improvement Loans Act). In order to make the provisions of sect. 76 (2) applicable to a tank excavated by a tenant it must be shown that the tank was excavated for the purpose of agriculture or for the use of men and cattle employed in agriculture (*Govind Chandra Basu v. Kamizuddin*, 9 C. W. N., ccxvi). Under the old law it was held that every raiyat with a right to hold his land permanently, such as an occupancy-raiyat, could build a *pukka* house on the land or do with it what he liked, so long as he did not injure it to the detriment of his landlord (*Niamatullah Ostagar v. Govind Charan Datta*, 6 W. R., Act X 40). But see *Jagat Chandra Rai v. Ishan Chandra Banurji*, (24 W. R. 220), in which it was said that a raiyat with a right of occupancy in agricultural land could not convert it into a dwelling-house and appurtenances. There is nothing in section 76 of the Bengal Tenancy Act to indicate that a suitable dwelling-house of an occupancy-raiyat as described in that section, must be of a temporary character only (*Hari Kishor Barna v. Barada Kishor Achariya*, 31 Calc., 1014 : 8 C. W. N., 754).

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect

Right to make improvements in case of holding at fixed rates and occupancy-holding.

of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Collector to
decide question
as to right to
make improve-
ment, &c.

78. If a question arises between the raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application, of either party, decide the question, and his decision shall be final.

Right to make
improvements
in case of non-
occupancy hold-
ing.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices ; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time ; and, if the landlord is unable

or neglects to comply with that request, may make the improvement himself.

Limitation—The period of limitation for a suit against a tenant for an act contrary to the provisions of the preceding sections of this Chapter is 2 years under art 32, sch. I of the Limitation Act. But to bar a suit against a tenant for the improper excavation of a tank, it must be shown that the suit is brought more than 2 years after the landlord became aware of the excavation (*Govind Chandra Basu v. Kamizuddin*, 9 C. W. N., ccxlv).

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

Registration of
landlord's im-
provements.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government, from time to time, by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act ;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

Extended to Orissa, (Not., June 27th, 1892).

Enhancement of rent on the grounds of landlord's improvements.—One of the grounds on which the landlord of an occupancy holding can sue for enhancement of rent is that the productive powers of the land have increased by an improvement effected by or at the expense of the landlord during the currency of the present rent

[sec. 30 (a)] ; but no enhancement can be decreed on this ground unless the improvement has been registered in accordance with the Act [sec. 33 (1) (a)].

Government rules.—The Government rules framed under this section are to be found in rules 13 to 18, Chap. III of the Govt. rules, Appendix I.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

For the rule passed by the Local Government under this section, see rule 19, Chap. III of the Government rules, Appendix I.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this sec-

tion to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors, as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

No tenant can contract himself out of his right to claim compensation for improvements [sec. 178 (1) (d)].

In a case, the cause of action in which arose in the Madras Presidency, it appeared that the land was demised on *kanam* for wet cultivation. The demisee changed the character of the holding, by making various improvements which were held to be consistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character of the holding was being changed and had thereby caused a belief that the change had his approval, it was held in second appeal that the demisee was entitled to compensation for his improvements on redemption of the *kanam* (*Kunhammed v. Narayan Mussad*, 2 Mad., 320).

The 2nd March, 1883, is the date on which leave to introduce the Bengal Tenancy Bill into Council was obtained.

No rules have yet been made by the Local Government under the provisions of sub-section (5).

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

Principle on which compensation is to be estimated.

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement ;
- (b) to the condition of the improvement and the probable duration of its effects ;
- (c) to the labour and capital required for the making of such an improvement ;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement ; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

A person who is not the immediate landlord cannot make an application under this section (*Narain Mahto v. Braja Bihari Singh*, 9 C. W. N., 472).

Extension of this section to the Sonthal Parganas.—By Government notification, No. 771, L. R., dated Feby. 20th, 1897, published in the *Calcutta Gazette* of Feby. 24th, 1897, Part I, p. 281, the provisions of this section were extended to the Sonthal Parganas district from the date of the notification.

Collector's Certificate.—The Collector's certificate referred to in this section is not conclusive as to the reasonableness and sufficiency of the purpose for which the land is sought to be acquired, and the Civil Court's jurisdiction is not confined to giving effect to the Collector's certificate, but the Court is to hold a judicial enquiry to determine the reasonableness and sufficiency of the purpose and all matters coming within the section, and is competent to consider the grounds upon which the certificate was granted. Further, the appointment of a European

Manager and the necessity for erecting buildings for his comfort and convenience are insufficient grounds for authorising the compulsory acquisition of land under the section. The purpose for which the land is sought to be acquired must have a direct relation to the good of the holding, and objects which might have a remote or speculative bearing upon the good of the holding are foreign to the scope of the Act (*Goghan Mollah v. Rameshar Narain Mahto*, 18 Calc., 271). The ground that by the acquisition the revenue would be increased and consequently it would be for the improvement of the estate is not reasonable and sufficient (*Narain Mahto v. Brajo Bihari Singh*, 9 C. W. N., 472).

Appeal.—There is no appeal against an order passed by the Civil Court under this section. Such an order is not a decree within the meaning of the definition in section 2 of the Civil Procedure Code, and no appeal is given against such an order either by sec. 588 (sec. 104 and O. XLIII, r. 1, Act V of 1908) of the Civil Procedure Code, or by any special provision of the Act (*Goghan Mollah v. Rameshar Narain Mahto*, 18 Calc., 271; *Piari Mohan Mukhurji v. Barada Charan Chakravartti*, 19 Calc., 485).

Sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

Sub-letting.

Restrictions on sub-letting.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Former law.—Under the former law a raiyat could sub-let his land and did not lose his right of occupancy by doing so, but his sub-lessee gained no such right (*Kali Kishor Chaturji v. Ram Charan Saha*, 9 W. R., 344; *Haran Chandra Pal v. Mukta Sundari*, 10 W. R., 113; 1 B. L. R., A. C., 81; *Jamir Ghazi v. Gonai Mandal*, 12 W. R., 110; 13 B. L. R., 278 note; *Khoshal Mahomed v. Jainudin*, 12 W. R., 451). The

mere fact of sub-letting did not make a raiyat a middle-man (*Ram mangal Ghosh v. Lakshi Narain Shah* 1 W. R., 71; *Karu Lal Thakur v. Lachmipat Dugar*, 7 W. R., 15; *Durga Parsanna Ghosh v. Kalidas Datta*, 9 C. L. R., 449). A raiyat having a right of occupancy could create a *mukarrari* lease; but the terms of a lease granted by him to a third party would only be binding as between them both (*Damri v. Bissessar Lal*, 13 W. R., 291), unless the landlord of the lessor gave the lessee power to sub-let, in which case the sub-lessee obtained rights against both, of which he could not be deprived without his own consent (*Nihalunnissa v. Dhanu Lal Chaudhri*, 13 W. R., 281). A lessee could not make an under-lease for a longer term than that of his own lease (*Hurish Chandra Rai v. Srikali Mukhurji*, 22 W. R., 274; *Surat Sundri Debi v. Binny* 25 W. R., 347; 3 C. L. R., 140; L. R., 5 I. A., 164), and sub-lessees had no more right to use the land in contravention of the terms of the original lease than their lessor had (*Monindra Chandra Sarkar v. Manirudin Biswas*, 20 W. R., 230).

Present law.—All raiyats may now sub-let, and apparently a sub-lease, if registered and for a term not exceeding nine years, is valid against the raiyat's landlord, whether he consents to it or not. But if the sub-lease is executed by a non-occupancy raiyat, it may be rendered void by his death (*Karim v. Sundur Bewa*, 24 Calc., 207; 1 C. W. N., 89; affirmed by the majority of the Full Bench in *Likshan Narain Das v. Jainath Pandey*, 5 C. L. J., 457). A sub-lease for a period of more than 9 years, which has been registered in contravention of sec. 86, cl. 2, is altogether void in spite of such registration (*Sri Kant Mandal v. Saroda Kant Mandal*, 26 Clac., 46). But the tenant can prove his tenancy aliundi (*Banku Behary v. Raj Chandra*, 13 C. W. N., cciv). An under-raiyat's lease, if unregistered, is invalid, and a landlord purchasing the holding of the raiyat in execution of a decree for arrears of rent is entitled to *khas* possession and to eject the under-raiyat without following the procedure prescribed by sec. 167 (*Piari Mohan Mukhurji v. Budal Chandra Bagdi*, 5 C. W. N., 310.) But this was dissented from in (*Amirulla Mahomed v. Nazir Mahomed*, 3 C. L. J., 155), in which it was held that even in these circumstances an under-raiyat cannot be ejected without serving on him a notice to quit. See also *Fazil v. Keramuddin*, (6 C. W. N., 916). But the rule is different if the under-raiyat is a plaintiff, and not a defendant resisting eviction. A plaintiff can only succeed on proof of title, and if an under-raiyat's lease is invalid, he has no title (*Ramgati Mandal v. Shyama Charan Datta*, 6 C. W. N., 919). A was a jotedar under Government. He let out a portion of his jote to one S, as a raiyat, and S sub-let a portion of his jote to the defendant, but not under a registered instrument nor with the consent of the landlord. Subsequently, S surrendered to the plaintiff

the portion of his holding which he had sub-let to the defendant, and the plaintiff sued to recover *khas* possession : held that the plaintiff was entitled to *khas* possession and no notice to quit was necessary (*Badan Chandra Das v. Rajeswari Debya*, 1 C. L. J., 88*n*). A sub-lease registered before the commencement of the Act is not valid for more than 9 years against the raiyat's landlord, but is valid against the raiyat (*Gopal Mandal v. Ishan Chandra Banurji*, 29 Calc 148 ; *Madan Chandra Kapali v. Juki Karikar*, 6 C. W. N., 377). These two rulings were dissented from in *Basaratulla Mandal v. Kasirunnissa*, (11 C. W. N., 190), in which it was laid down by Geidt, J., that sec. 82, (2) was not enacted merely for the protection of the superior landlord, and that a sub-lease by a raiyat for a term of nine years is invalid, even against the raiyat. "Shall not be valid" means, shall not be valid against the landlord ; the sub-lease will be binding as between the raiyat and his sub-lessee (*Tamijuddi v. Ajgar*, 36 Calc. 256 ; 13 C. W. N., 183 ; *Bepin Behari Hati v. Amrita Lal Bhattacharji*, 9 C. L. J., 76) : a landlord, however, who purchases the raiyat's holding at a private sale cannot treat the sub-lessee of the raiyat as a trespasser and must if there is no registered sub-lease proceed under sec. 49 (*Amirulla v. Nasir Mahomed*, 34 Calc., 104). It would appear that under-raiyats may sub-let in their turn ; for though the terms of the present section do not expressly apply to under-raiyats, yet in sec. 4 (3) an under-raiyat is defined as a tenant holding either immediately or *mediately*, under a raiyat. As to the acquisition by under-raiyats of occupancy-rights in their holdings and as to the transferability of their rights, such matters would seem according to the Act to be regulated by custom or usage (see note to sec. 49, *ante*, pp. 167, 168). Other provisions of this Act relating to sub-letting are sec. 121, proviso (3), under which a landlord cannot distrain the produce of any part of a holding which the tenant has sub-let with the written consent of his landlord : section 136 (5), under which a landlord is not to be deemed to have consented to his tenant's sub-letting the holding, or any part thereof, merely because he has received an amount deposited by an inferior tenant to obtain the release of property from distraint ; and sec. 138, which provides that when land is sub-let and any conflict arises between the rights of a superior and an inferior landlords who distrain the same property, the right of the superior landlord shall prevail.

Under sec. 178, sub-section (3) clause (*e*), nothing contained in any contract made after the passing of this Act can take away the right of an occupancy raiyat to sub-let subject to, and in accordance with, the provisions of this Act.

Registration rule under sub-section (2) :—The Registration department has framed the following rule with the view to the carrying out of the provisions of this sub-section :—"When a sub-lease executed

by a raiyat, purporting to create a term exceeding nine years, is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, *viz.* : 'Not admissible under sub-sec. 2, sec. 85 of the Bengal Tenancy Act (VIII of 1885)' The note shall be signed, sealed and dated by the registering officer." (See Registration Rules, Appendix IV, rule 3).

Surrender and abandonment.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

*Surrender and
abandonment.
Surrender.*

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely :—

- (a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;
- (b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within

the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing subsection, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Former law.—Under sec. 19 of Act X of 1859 and sec. 20 of Act VIII, B. C., of 1869 any raiyat who desired to relinquish the land held or cultivated by him was at liberty to do so, provided he gave notice of his intention in writing in or before the month of Jeyt in districts where the Fasli year prevailed, and in or before the month of Posh in districts where the Bengali year prevailed, of the year preceding that in which the relinquishment was to have effect. If he failed to give such notice and abandoned the land, and the land was not let to any one else, he continued liable for the rent. If the landlord or his agent refused to receive the notice, the raiyat could apply on plain paper to the Collector, who had then to serve the notice of relinquishment on the landlord. A verbal notice of relinquishment was therefore not sufficient (*Banamali Ghosh v. Dilu Sardar*, 24 W. R., 118), except in the case of an *utbandi* raiyat (*Kenny v. Issar Chandra Poddar*, W. R., Sp., No., 1864, Act X, 9). Mere proof of the giving of a notice of relinquishment without proof of actual relinquishment of the land did not relieve a raiyat of the liability to pay rent (*Nobin Chandra Rai v. Lakhi Pria Debi*, 1 W. R., 20), and mere relinquishment of the land would not so relieve him (*Mahomed Azmal v. Chandi Lal Pandi*, 7 W. R., 250). If, however, the landlord let the land to other persons, the raiyat could not be held liable for the rent, though he might not have given a notice of relinquishment (*Mahomed Ghazi v. Sankar Lal*, 11 W. R., 53). In one case it was said that where the tenant was found to have taken steps required by law in furtherance of his intended relinquishment, it was for the

landlord to prove his continued possession. But where the tenant had not gone through the necessary steps, it was for him to prove that the landlord had taken possession of the land and had enjoyed the profits by holding it *khas* or letting it to others (*Erschine v. Ram Kumar Rai*, 8 W. R., 221). In one case, too, in which a member of a joint-family was registered as *jotedar* in the *zamindar's serishtah*, not as for himself only but as manager for the family, it was held that his relinquishment of the *jote* was not sufficient to authorize the *zamindar* to make arrangements with others (*Baikant Nath Das v. Bisso Nath*, 9 W. R., 268), and where a joint lease had been given to many persons with an entirety and equality of interest among the tenants, the resignation of some of the joint lessees did not necessarily operate to void the lease (*Mohima Chandra Sen v. Pitambar Shah*, 9 W. R., 147). It was only raiyats who could in this way relinquish their land. *Patnidars* could not throw up their *patni*; for the contract, though not indissoluble, could only be dissolved by an act of the Court after proper enquiry (*Hira Lal Pal v. Nil Mani Pal*, 20 W. R., 383), and in *Jadunath Ghosh v. Schoene, Kilburn & Co.*, 9 Calc., 671 : 12 C. L. R., 343), it was laid down that a tenure under a *dar-maurasi mukarari* lease of land, which was not let for agricultural purposes, could not be put an end to by mere relinquishment on the part of lessee, even after notice to the landlord. In this case it was further held by Field, J., that the principle laid down in *Hira Lal Pal v. Nilmani Pal*, that the *patnidar* could not of his own option, relinquish his tenure, was applicable to all intermediate tenures, other than farming leases, between the *zamindar* and cultivator of the soil. Though according to the strict terms of the old law any raiyat could relinquish his land, it was held that a raiyat who had taken a lease in writing for a fixed period could not do so (*Kashi Singh v. Onraet*, 5 W. R., Act X, 81), and a raiyat holding under lease for a short time could give up the land at the end of the term without giving a notice of relinquishment to the landlord (*Tilak Patil v. Mahabir Pandey*, 15 W. R., 454). But a perpetual contract by a lessee for his heirs reciting that they should never relinquish the *jote*, was held not to bar their doing so in a legal manner (*Gopal Lal Chaudhri v. Turini Prosad Ghosh*, 9 W. R., 89). When a *mukararidar* resigned his tenure, the *dar-mukararis* created by him came to an end, but this did not affect raiyats holding rights of occupancy (*Kailash Chandra Biswas v. Bireswari Dasi*, 10 W. R., 408). But a tenant holding for a term and sub-letting his land could not by surrendering his own term to the landlord determine the interest of his under-tenant (*Hira Mani v. Ganga Narain Rai*, 10 W. R., 384). Part of a holding could not be surrendered (*Sarada Sundari Debi v. Mahomed Mandal*, 5 W. R., Act X,

78 ; *Anarullah v. Kailash Chandra Basu*, 8 Calc., 118. But see *contra*, *Habila Sarkar v. Durga Kant Mazumdar*, 11 W. R., 456).

Present law.—According to sec. 178 (3) (c), nothing in any contract made between a landlord and tenant after the passing of this Act shall take away the right of a raiyat to surrender his holding under this section. The heirs of a deceased tenant having rights of occupancy and who has died intestate are liable for the rent unless they have surrendered the land or done something from which a surrender in the terms of this section can be presumed, and non-cultivation of the land does not necessarily amount to a surrender (*Piari Mohan Mukerji v. Kumaris Chandra Sarkar*, 19 Calc., 790). See note to sec. 26, pp. 118, 119. There may be a valid surrender of an occupancy-holding without a written document (*Abdur Rahman v. Ali Hafiz*, 5 C. W. N., 351). See also *Imambandi v. Kamleswari*, (14 Calc., 109 : L. R., 13 I. A., 160). Plaintiff, a *jotedar* under Government, let out a portion of his *jote* to S, as a raiyat. S sublet a portion of his holding to defendant, but not under a registered instrument nor with the consent of plaintiff. Subsequently, S surrendered to the plaintiff the portion of his holding which he had sub-let to the defendant. The plaintiff sued for *khas* possession and was held entitled to it, no notice to quit being necessary (*Badan Chandra Das v. Rajeswari Debya*, 2 C. L. J., 570.) A relinquishment by one of several tenants of a joint occupancy holding does not enlarge the right of the other co-sharers or deprive the landlord of what would ordinarily belong to him (*Piari Mohan Mandal v. Radhika Mohan Huzra*, 8 C. W. N., 315).

Notice of surrender.—For the rule passed by the Local Government regarding the service of the notices of surrender referred to in sub-sections (2) and (4), see rule 9, Chap. V, of the Govt. rules, Appendix I. Personal service is not required (*Khirod Chandra v. Hashan Ali*, 6 C. W. N., xxviii).

Applications for service of notices of relinquishment exempt from Court-fees.—Under cl. (12), sec. 19, Act VII of 1870, applications for service of notices of relinquishment are exempt from Court-fees.

Sub-section. (6).—This sub-section has been introduced to check collusive surrender in fraud of the rights of third parties. In the report of the Select Committee on the Bill it is said that “raiyaats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the lessor in collusion with his landlord would do serious practical harm.” (Selections from papers relating to the Bengal Tenancy Act, 1885, p. 386). The term

“incumbrance” is defined in sec. 161, but for the purpose of Chap. XIV only, as “any lien, sub-tenancy, easement, or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in sec. 160.

Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat, unless he is protected by sec. 85 or sec. 86, cl. (6). In such a case no notice to quit is necessary (*Nilkanta Chaki v. Ghatu*, 4 C. W. N., 667). If however the subtenant has acquired a lien under sec 171 by the payment of the raiyat's arrears under decree, the landlord can not get khas possession on surrender until the lien is discharged (*Nabadwip Chandra Pal v. Bhairab Chandra Dhar*, 13 C. W. N., 97).

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly ; and the Collector shall cause a notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy raiyat, six months, from the date of the publication of the notice ; and thereupon the Court

may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Former law.—When a raiyat without giving notice goes away from the land he has occupied, and neither cultivates it nor pays rent, the landlord is justified in assuming that he has relinquished it; and the raiyat has no right to ask to be re-instated on the ground that he has never formally relinquished the land (*Ram Chang v. Gora Chand Chang*, 24 W. R., 344. See also *Chandra Muni Nyabhushan v. Shambhu Chandra Chakravartti*, W. R., Sp. No., 1864, 270; *Manirudin v. Mahomed Ali*, 6 W. R., 67; *Harihar Mukhurji v. Judonath Ghose*, 7 W. R., 114; *Nadiar Chand Poddar v. Modhu Suddan De Poddar*, 7 W. R., 153; *Haro Das v. Gobind Bhattacharji*, 12 W. R., 304; 3 B. L. R., App., 123; *Mati Sunar v. Gundur Sunar*, 20 W. R., 129; *Boidinath Manjhi v. Aupurna Debi*, 10 C. L. R., 15; *Ghulam Ali Mandul v. Golap Sundari Dasi*, 8 Calc., 612; 10 C. L. R., 499). But the non-cultivation of a small portion of an ancestral *jote* by the admitted holders for one year, owing to their minority, does not amount to relinquishment (*Radhu Madhub Pal v. Kali Churan Pal*, 18 W. R., 41).

Mere non-payment of rent is not evidence of abandonment, but non-payment of rent coupled with non-occupation of the land (*Masyatullah*

v. *Nurzahan*, 9 Calc. 808 : 12 C. L. R., 389), or with submergence of the land (*Hemnath Datta v. Ashgar Sardar*, 4 Calc., 894 : see *contra*, *Mazhar Rai v. Ramgat Singh*, 18 All., 290) is evidence of an intention to abandon it. So, also, when a raiyat sells his holding, quits occupation and ceases to cultivate or hold the land, he may be regarded as having abandoned it, and the landlord may recover possession from the transferee (*Narendra Narain Rai v. Ishan Chandra Sen*, 22 W. R., 22 : 13 B. L. R., 274 ; *Ram Chandra Rai v. Bholanath Lashkur*, 22 W. R., 200). Even when the right of occupancy is transferable, the raiyat cannot transfer different parts of it to different persons and in case of such transfer the landlord can treat the transferees as trespassers and eject them (*Tirthanand Thakur v. Mati Lal Misra*, 3 Calc., 774).

Present law.—When an occupancy-raiyat has transferred his rights in the whole of his land, but remains on as sub-lessee of his transferee, he must be held to have abandoned the land, and the landlord can eject the transferee (*Kalinath Chakravarti v. Upendra Chandra Chaudhri*, 24 Calc., 212 : 1 C. W. N., 163 ; *Wilson v. Radha Dulari Koer*, 2 C. W. N., 63. See *Dwarkanath Misra v. Harish Chandra*, 4 Calc., 925, and *Sristidhar Biswas v. Madan Sardar*, 9 Calc., 648). But this was dissented from in *Madar Mandal v. Mahima Chandra Mazumdar* (33 Calc., 531), in which it was *held* that where a tenant having a non-transferable right of occupancy sold such right to a third person, obtained a lease from the purchaser and remained in possession of the land and was cultivating the same, the landlord was not entitled to *khas* possession against him. But if the raiyat after taking such a sublease from his transferee denies his liability to pay rent to his landlord, he will be considered to have lost all right to retain possession against the will of his landlord or regain it when dispossessed by him. (*Rajanikant Biswas v. Ekkari Das* 34 Calc., 689 : 11 C. W. N. 811 : 7 C. L. J. 78). So, too, where the rent of the holding was paid by the transferees in the name of the raiyat it was said that the mere fact that the raiyat went away from the holding to reside elsewhere would not be sufficient to make out a case of abandonment, so as to entitle the landlord to re-enter. (*Mathura Mandal v. Ganga Charan Gope*, 33 Calc., 1219 : 10 C. W. N., 1033). A tenant does not lose his right in his holding by an unauthorised alienation, if he is still on the land (*Nadhu Mandal v. Kartik Mandal*, 9 C. W. N., 56). When defendants 2 and 3 who had a non-transferable occupancy holding sold it to defendant 1 and took an under-lease of the same from the latter ; *held*, that the landlord was entitled to get a decree for possession against defendant 1, but was not entitled to get *khas* possession against defendants 2 and 3, but only to receive rent from them (*Dinanath Rai v. Krishna Bijai Saha*, 9 C. W. N., 379). The apparent incongruity

of this ruling was explained and justified in *Rajanikant Biswas v. Ekkari Das* (34 Cal., 689). It is not the notice which terminates the tenancy, but the voluntary abandonment coupled with acts on the part of the landlord (not necessarily limited to the giving of notice) indicating that he considers the tenancy at an end, and it is for the Court in each case to determine whether the tenancy has terminated (*Lal Mamud v. Arbullah*, 1 C. W. N., 198). Section 87 does not apply to a case in which, though the landlord has not followed the procedure prescribed by the section, the plaintiff is only a mortgagee of a part of a non-transferable *jote* (*Madan Mohan Ghosh v. Habi*, 2 C. W. N., clxxxii). A trespasser has no right to resist a landlord's suit for possession on the ground that the notice required by sub-section (2) has not been given. This plea can only be raised by a tenant of the land. See note to sec. 25,—“*Invalid transfer of whole or part of holding*,” pp. 115-117. and note to sec. 89,—“*Sale or transfer of whole or part of a holding is not a ground of forfeiture*,” pp. 286, 287.

If the mortgagee of a non-transferable occupancy holding sells the same in execution of a decree on his mortgage, and takes possession, the landlord can re-enter as upon an abandonment without serving a notice under sub-section 2 and without even impleading the *raiyyat* as a defendant (*Ram Persad Koeri v. Jawahir Roy*, 12 C. W. N., 899).

The provisions of this section apply only to cases in which a landlord takes possession of an abandoned holding without bringing a suit. They are not exhaustive. They do not prescribe the only mode in which a holding can be abandoned, and are not applicable to cases in which a landlord sues for possession of a holding on the ground that it has been abandoned. So, in *Bhagaban Chandra Misri v. Bissaswari Dehya*, (3 C. W. N., 46), in which it was contended that the plaintiffs, who were the landlords of a holding, not having taken steps under section 87, were not entitled to *khas* possession of an abandoned holding, it was held that section 87 provides for certain steps to be taken by the landlord for his own protection against any subsequent action on the part of the tenant, when there is no person in actual occupation of the land, but that when the old tenant had abandoned the holding, a person who had admittedly acquired no interest under an auction-purchase of it, had no title to remain on the land.

When a *raiyyat* sold his non-transferable holding and was no longer in possession of it and paid no rent for it, and the landlord brought a suit for ejectment against both transferor and transferee, it was held that the landlord was entitled to a decree and no notice under section 87 was necessary (*Samujan Rai v. Mahatun*, 4 C. W. N., 493). See also *Ram Persad Koeri v. Jawahir Roy* (12 C. W. N., 899).

Notice of intention to re-enter and rule for its service.—

The form of notice to be given by the landlord under sub-section (2) is to be found in Schedule I to the Government rules under this Act (App. I). The rule framed by Government for its publication is rule 37 Chap. V of the Government rules, App. I. Personal service of the notice is not necessary (*Khirod Chandra v. Hashan Ali*, 6 C. W. N., xxviii).

Sub-section (3) Limitation.—The provisions of this sub-section will only apply when the landlord has entered on the land after giving the notice referred to in the preceding sub-section. In other cases, when the plaintiff is an occupancy raiyat, the rule of limitation laid down in art. 3, Schedule III, appended to this Act, will apply.

Sub-section (4).—This sub-section has been framed with the same view as sub-section (6) of the preceding section, *viz.*, to protect sub-lessees from collusion between their lessor and the superior landlord. Even if a landlord thinks the raiyat has abandoned the land, he has no right to enter on land in possession of sub-lessees without the assistance of the law (*Jamir Ghazi v. Gonai Mandal*, 12 W. R., 110). If he does so dispossess the sub-lessees without the sanction of law, he commits trespass (*Damri Shaikh v. Bissessar Lal*, 13 W. R., 291)

Sub-division of tenancy.

A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his [express] consent in writing, [or with that of his agent duly authorized in that behalf.]

[Provided that, if there is proved to have been

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88. A division of a tenure or holding or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

Section 18 of the Bengal Act I of 1907 intended to amend sec. 88 of the original Act as to subdivision of tenancies, has been omitted from Act I of 1908 E. B. C.; the reasons for the omission are thus set out in

made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.]

By section 3 of Act I. B. C., of 1903 (The Bengal Tenancy Validation Act) it is provided that "nothing in section 1 (see p. 84.) shall be deemed to affect the provisions of section 88 of the Bengal Tenancy Act, 1885."

The words and the proviso in brackets have been inserted in, and added to, the section by s. 18 of Act I. B. C., of 1907. In the Notes on Clauses to the Bill it was said that "the amendment will make it clear that the landlord is only bound by an express consent in writing given by himself or a duly authorised agent."

In the report of the Select Committee on the Bill it was pointed out that "unless their agents are expressly authorised in that behalf, it would be unfair to the landlords and detrimental to their interest to enact that recognition of the division or sub-division of a holding, and the acceptance of a proportionate share of rent by their agent is

the report of the Select Committee :—

"Much more than is the case in Bengal the zemindars of this province are non-resident and leave the management of their estates wholly in the hands of their local agents.

Moreover the bulk of the tenants are Mahomedans whose law of inheritance tends to promote the subdivision of tenancies.

It has been strongly pressed upon us that the inevitable result of the proposed amendment of the law will be to cause grave and widespread-injustice. The tenant deals with the local agent. He has been accustomed to regard him as fully empowered in all particulars. He has no opportunity of procuring inspection of the agent's power of attorney and if he did see it, would probably not understand its contents. There are unscrupulous landlords as well as unscrupulous tenants and dishonest agents.

No landlord will in fact give his local agent the required authority, and in practice the tenant will not be able to secure inspection or production of the rent roll, and even where it may be produced and the necessary entry discovered, the landlord will not find it difficult, to rebut the presumption. Thus the proviso will not be of practical value.

If the proposed clause be passed into law a tenant who thereafter secures recognition of a division by payment in good faith to the agent, of the customary selami, many years

binding upon the landlord. A wide door would be opened to fraud, and it would be easy for tenants to secure recognition by bribes to the agent. We have therefore provided that there must be an express authorization for the exercise of this power by the agent."

As regards the proviso, in the Notes on Clauses it was said: "The ordinary practice is for the landlord to signify his consent to the division of a tenure or holding and distribution of the rent payable, by making the necessary alteration in his rent-roll, and it is accordingly provided that where such an alteration has been made, it may be presumed that the landlord has given his express consent to the division."

later find that his money is confiscated and that his fields are to be sold for the arrears of some thriftless defaulter.

It has not been shown to us that, in any case where fraudulent collusion between tenant and agent existed, any court has held that tenant's receipt is nevertheless to be taken as the tenant's assent, and we are of opinion that in general, the landlord can readily protect himself by entertaining more highly paid and therefore more reliable agents, by the exercise of stricter supervision over his employees and making it widely known by printed endorsements on rent receipt forms and otherwise that his local agents are not authorised to open separate accounts." The law in the transferred districts therefore remains as it was before the amending Act.

Former Law and rulings.—The former law on the subject was contained in the proviso to sec. 27 of Act X of 1859 and to sec. 26 of Act VIII, B. C., of 1869 and was to the effect "that no *samindar* or inferior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any division or distribution of the rent be valid and binding without the consent in writing of the *samindar* or superior tenant." The terms of this proviso were given effect to in *Watson & Co. v. Ram Sundar Pandi*, (3 W. R., Act X, 165); *Upendra Mohan Tagore v. Thanda Dasi* (3 B. L. R., A. C., 349; 12 W. R., 263); *Dashorathi Mahapatra v. Ram Krishna Juma*, (9 Calc., 526). In *Jadunath Sahana v. Jadab Chandra Thakur*, (11 W. R., 294), it was said that a *patni taluk* cannot be divided except by an act of the *samindar* or by an act recognized by him: the transfer of a portion in no way affects the existence of the *patni* in its entirety or the rights of the *samindar*. But in *Hari Mohan Mukhurji v. Gora Chand Mitra*, (2 W. R., Act X, 25), it was held that a farmer of a Government *khas mahal* had power to assent to the division of a *raiya* holding within his farm into several distinct holdings, and in this case it does not appear that he

gave his consent in writing. In *Bharat Rai v. Ganga Narain Mahapatra*, (14 W. R., 211), it was ruled that a *zamindar* by accepting rent assents to the transfer of a tenure, whether sold in whole or in part only. A *zamindar* may recognize the division of a holding either formally by actually dividing it into parts or impliedly by receiving rent from parties holding separately (*Uma Charan Banurji v. Rajlakhi*, 25 W. R., 19). And in *Nobo Krishna Mukhurji v. Sriram Rai*, (15 W. R., 255), it was decided that no written consent was necessary, when a *zamindar* had himself put up a tenure for sale in separate lots and had taken rent from two of the purchasers separately. But in *Gaur Mohan Rai v. Anand Mandal*, (22 W. R., 295), it was said that the fact of some of the joint occupiers of a joint-tenure paying portions of the rent due from all, corresponding with the shares for which the joint occupiers are liable, cannot prevent the *zamindars* from suing them all, or making them all answerable for the joint debt. In *Lalan Muni v. Sona Moni Debi*, (22 W. R., 334), in which one suit for rent was brought against persons who alleged themselves to be the holders of separate tenures, it was said that the mere fact of their non-registration as such was immaterial, and the case was remanded and the lower Court directed to enquire whether the four tenures had been really one at the time of the former holder of them, and whether the *zamindar* had merely treated the defendants as representatives of the former holder and as payers of the component parts of the aggregate rental. "If the *dakhilas* show," it was said, "that the payment of separate rentals had been made as for separate tenures, that would be evidence of the holdings being separate. If the evidence shows that the amounts were paid as aliquot parts of the whole rental, that would go to show that the tenure was one." But in *Tirthanand Thakur v. Mati Lal Misra*, (3 Calc., 774), it was ruled that the existence of a custom in a particular district by which rights of occupancy are transferable will not justify the holder of such a right of occupancy in subdividing his tenure and transferring different parts of it to different persons; and in case of such transfer the *zamindar* is entitled to treat the transferees as trespassers and eject them. On the other hand, when tenants hold land by different agreements, the *zamindar* has no right without their consent to break up existing holdings and re-distribute lands so as to alter the nature and extent of the holdings (*Rahimadin Akun v. Purno Chandra Rai*, 22 W. R., 336).

Rulings under the present Act.—The object of this section is to save the landlord from any diminution in the value of the security for the due realization of his rent and the result of it is that the landlord can recover his rent from the transferor and the transferee and is not bound

to recognise a splitting up of the tenure (*Bandez Khan v. Kedarnath*, 11 C. W. N., cxliv). The sale of a portion of a holding does not bind a landlord, unless his consent in writing has been obtained (*Ram Mayi Dasi v. Rupai Paramanik*, 1 C. L. J., 41n. : 9 C. W. N., cxxiii). In *Abhai Charan v. Sashi Bhusan Basu*, (16 Calc., 155), it was held that *dikkilus* or rent-receipts showing that a tenant holds half the land at half the rent of the whole holding do not amount to the written consent required by this section. But the ruling in this case was dissented from in the Full Bench case of *Piari Mohan Mukhurji v. Gopal Paik* (2 C. W. N., 375 : 25 Calc., 531), in which it was laid down that a receipt for rent granted by the landlord or his agent in the form prescribed by the Bengal Tenancy Act, containing a recital that a tenant's name is registered in the landlord's *serisht* as a tenant of a portion of the original holding at a rent which is a portion of the original rent, amounts to a consent in writing by the landlord to a division of the holding and to a distribution of the rent payable in respect thereof within the meaning of section 88 of this Act : provided that, if the receipt has been granted by an agent he has been duly authorised by the landlord to grant such a receipt.⁽¹⁾ When the defendant held separately a share of a *shikmi taluk* under the plaintiff and transferred that share to a third party and served a notice of transfer under s. 12 on the landlord :—held, that the act of the defendant in making the transfer did not amount to a sub-division of the tenure (*Kali Sundari Debi v. Dharani Kanta Lahiri*, 10 C. W. N., 272 : 33 Calc., 279 ; *Baistab Charan Chaudhuri v. Akhil Chandra Chaudhuri*, 11 C. W. N., 217).

But where a holding is in occupation of several tenants at one entire rental, the fact that the landlord's *tahsildar* has accepted from the tenants proportionate parts of the rent does not bind the landlord in the absence of evidence to connect the landlord with the receipt of any proportionate rate of rent by the *tahsildar* (*Beni Prasad Koeri v. Goburidhan Koeri*, 6 C. W. N., 823). Receipts granted by the landlord's *tahsildar* to the tenants separately for their proportionate shares of the rent do not necessarily imply the landlord's recognition of the sub-division of a tenancy (*Beni Prasad Koeri v. Ram Dahin Pandey*, 1 C. L. J., 90 n. : 10 C. W. N., 216).

A receipt for rent granted by a landlord or his agent containing no specification of the total *jama*, no statement of the area, or of the portion of the holding separated and separately settled with the tenant, nor of the share separated, nor containing a recital that the tenant is registered in the landlord's *serisht* as a tenant of portion of the original holding at

¹ It was to set at rest doubts raised by this ruling that the new proviso to the section has been added by Act I, B. C., of 1907. The Law in East Bengal remains the same as before.

a rent, which was a portion of the original rent, does not amount to a consent in writing to a sub-division of the holding. An entry in a *furd* or account which appeared on the face of it to have been written by a servant of a tenant and exhibited payments of rent made in respect of six different *talugs* by the tenant to the landlord, and which was signed and receipted by a *sunarnavis* of the said landlord, does not amount to a consent in writing on behalf of the landlord to a division of the tenure or distribution of the rent. (*Jayendra Mohan Chaudhuri v. Gopal Das Chaudhuri*, 31 Calc., 1026 : 8 C. W. N., 923). A division of a holding by way of mortgage is not binding against the landlord (S. A., No. 1894 of 1887, decided July 31st, 1888 ; *Joynarain Tewari v. Baran Singh*, 10 C. W. N., lxxxvii).

The consent referred to in this section must be the consent of the whole body of landlords. Co-sharer landlords cannot consent to the division of a tenure or holding or to a distribution of its rent (S. A., No. 28 of 1897, decided by Rampoini and Henderson, JJ., July 7th, 1898). But a partition decree in favour of the plaintiff as a co-sharer in a tenure cannot affect her rights as proprietor to sue, for the whole rent of the tenure minus her own share : the decree does not effect a sub-division of the tenancy within the meaning of section 88. (*Dukharan Sing v. Bibi Sogra*, 12 C. W. N. xcv).

There is nothing in this section to prevent a person who has purchased a share in a *mukarari* holding from bringing a suit for a declaration of his right to that share and for possession of the same, after setting aside a sale held in execution of a decree for rent, to which he was not made a party. Sections 17 and 18 recognize the transfer of a share of a holding and entitle the transferee to claim to be regarded as one of the tenants of the holding (*Mahesh Chandra Ghosh v. Sarodu Prasad Singh*, 21 Calc., 433). A landlord is not entitled to enter upon land merely because the tenant had transferred a portion of it, though still in possession of another portion ; but he is entitled to a declaration that the transfer having been made without his written consent is not binding upon him (*Gozaffar Hussain v. Dalgleish*, 1 C. W. N., 162). The transfer of a portion of an occupancy holding is contrary to the spirit, if not the letter, of sec. 88 ; and the existence of a custom in a particular place by which such a holding is transferable is immaterial, and gives no right to the transferee as against the landlord (*Kuldip Singh v. Gillanders Arbuthnot & Co.*, 26 Cal., 615 : 4 C. W. N., 738 ; *Beni Madhab v. Madhusudan*, 8 C. L. J. 2n.). In a later case it was said that the decision in *Kuldip Singh v. Gillanders Arbuthnot & Co.* is no authority for the proposition that the purchaser of a portion of a *jote* gets no title (*Ashok Bhuiyan v. Karim*, 9 C. W. N., 843). Where the

landlord's rights are not questioned a transferee of a portion of a holding may maintain a suit against persons claiming under an inferior title, even though they may set up a recognition by the landlord. (*Gaur Kaibarta v. Tarajan Bebi* 8 C. L. J. 161). But the transferee of a part of a tenure is jointly liable with his co-sharer for the whole rent ; for although the privity between the parties may be one of estate only, it is in respect of the whole of the tenure, though the transfer was of a part, by reason of the indivisibility of the tenure without the landlord's consent (*Jogemaya Dasi v. Girindra Nath Mukhurji*, 4 C. W. N., 590). Where a *dar-patnidar* to the knowledge of his landlord, transferred a portion of the *dar-patni* to one person on one date, and the remainder to another person on a subsequent date ; *held*, (Maclean C. J., *dubitante*) that after the second transfer the liability of *dar-patnidar* for rent ceased and the two transferees became jointly and severally liable to the landlord for the same : *per* Maclean C. J., that the act of the *dar-patnidar* in transferring the tenure piecemeal had the effect of dividing the tenure contrary to the provisions of sec. 88 (*Kishori Raman Kupuria v. Ananta Ram Laha*, 10 C. W. N., 270).

Ejectment.

Ejectment.

No ejectment except in execution of decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Former law.—The proviso to sec. 21 of Act X of 1859 and sec. 22 of Act VIII, B. C., of 1869 provided that no raiyat having a right of occupancy or holding under a *puttah* the term of which had not expired should be ejected otherwise than in execution of a decree or order under the provisions of the Act. The liability of the holder of a *mukarari istimrari ijara* to ejectment depended on the terms of his lease (*Balaram Das v. Jagendra Nath Mallik*, 19 W. R., 349). If a landlord ejected tenants of other classes otherwise than in accordance with the law, they could only recover possession by means of a possessory suit under sec. 15, Act XIV of 1859 (*Jamardan Acharji v. Haradhan Acharji*, 9 W. R., 513 ; *Nand Kishor Lal v. Shco Dayal Upadhyay*, 11 W. R., 168 ; *Arjun Datta Banik v. Ram Nath Karmakar*, 21 W. R., 123).

Present law.—A tenant can now be ejected only on the grounds specified in sections 10, 18, 25, 44, 49 and 66 of this Act. See the notes to these sections. Under sec. 178, (1) (c) nothing in any contract made before or after the passing of this Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

Service tenures.—Service tenures are excepted from the operation of this section (*Makbul Hossain v. Amir*, 25 Calc., 131).

A benamidar cannot sue for ejectment.—A mere *benamidar* cannot maintain a suit for ejectment, he having neither title to, nor possession of, the property (*Issar Chandra Datta v. Gopal Chandra Das*, 25, Calc., 98 : 3 C. W. N., 20).

Notice to quit.—A notice to quit is not bad in law simply because of a small error in the statement in such notice of the area of the land, in consequence of which it included some land which the defendant was found not to hold under the plaintiff (*Sham Charan Mitra v. Uma Charan Haldar*, 25 Calc., 36 : 2 C. W. N., 106). See also Woodfall's Law of Landlord and Tenant, Chap. VIII, sec. 7, 14th edit., (p. 362). The subject of dispute in a case was a piece of homestead land, and it does not appear that the tenant was a raiyat. In a tenancy created by a *kabuliyat* with an annual rent reserved, a six months' notice to quit requiring the tenant to vacate the holding within, instead of on the expiry of, the last day of a year of the tenancy is a good notice in law, inasmuch as there was no appreciable interval between the expiry of the notice and the end of a year of a tenancy (*Ismail Khan v. Jaigun*, 27 Calc., 570 : 4 C. W. N., 210). When a raiyat surrenders his tenancy, an under-raiyat who is not protected by sec. 85 or sec. 86 cl. (6), is not entitled to notice to quit, before the landlord can eject him (*Nilkanta Chaki v. Ghatu*, 4 C. W. N., 667).

The validity of a notice to quit may be questioned for the first time in the course of a second appeal in a suit (*Gauri Sankar Shah v. Naja-bratt Hossain*, 1 C. W. N., clxxix).

Suit against tenants as trespassers.—In a suit against certain tenants as trespassers, the Lower Appellate Court found that the defendants were not trespassers and gave the plaintiffs a decree for rent. It was held that the suit should have been dismissed, as the plaintiffs were not entitled to get any other relief than the particular relief they asked for (*Kali Kishor Chaudhri v. Gopi Mohan Rai Chaudhri*, 2 C. W. N., 166).

Sale or transfer of whole or part of a holding is not a ground of forfeiture.—The sale or transfer of the whole or part of a holding is not a ground of forfeiture, as long as the raiyat does not disclaim an interest in the holding and continues to pay the rent for it (*Kabil Sardar v. Chandra Nath Nag Chaudhuri*, 20 Calc., 590 ; *Bansi Das v. Jagdip Narain Chaudhri*, 24 Calc., 152). The transfer by an occupancy raiyat of a part of his holding does not entitle the landlord to recover possession by ejecting the transferee in the absence of evidence to show that by custom such transfer is allowed (*Durga Prasad*

Sen v. Daula Gazi, 1 C. W. N., 160). The transfer by a raiyat of a portion of his non-transferable *raiyaṭi jote* without his landlord's consent does not work a forfeiture, and the landlord is not entitled to *khas* possession (*Gozaffur Hussain v. Dalgleish*, 1 C. W. N., 172). Parting with the possession of a portion of a holding by a non-occupancy raiyat is not a ground of forfeiture (*Chundra Mohon Mukhopadhyaya v. Bissessar Chaturji*, 1 C. W. N., 158). But when a tenant transfers his non-transferable holding, abandons possession, and ceases to pay rent for it, the landlord is entitled to eject the transferee (*Wilson v. Radha Dulari Koer*, 2 C. W. N., 63). So, too, when the raiyat transfers his holding, and ceases to pay rent for it, but accepts a new tenancy from the transferee, the landlord is entitled to eject the transferee (*Kali Nath Chakravarti v. Upendra Chandra Chaudhri*, 24 Calc., 212 : 1 C. W. N., 163). Similarly, a landlord cannot eject a tenant simply because he has transferred a part of his holding, remaining in possession of the other parts (*Pandab Nath v. Durga Charan Rai*, 2 C. W. N., clv). But this has been doubted, and in *Kissen Pretab Sahi v. Tripe*, (1 C. W. N., cclxxix : 2 C. W. N., cliv), the question whether the transfer of a portion of a holding did not work a forfeiture, so far as that portion was concerned, when the tenant refused to pay rent for the portion sold by him, was referred to a Full Bench. As, however, it was found that there was no evidence that the tenant had refused to pay rent for the portion sold by him, it was *held* by the Full Bench that the question referred did not arise and it was not answered. See also note to sec. 25, pp. 115-117, and the case of *Rajani Kant Biswas v. Ekkari Das*, (11 C. W. N., 811 : 34 Cal. 689).

Denial of landlord's title no ground of forfeiture.—Denial of a landlord's title does not work a forfeiture or entitle the landlord to eject the tenant, either in the case of an occupancy raiyat (*Debiruddin v. Abdur Rahim*, 17 Calc., 196), a non-occupancy raiyat, (*Chandra Mohan Mukhopadhyaya v. Bissessar Chaturji*, 1 C. W. N., 158), or an under-raiyat (*Dhora Kairi v. Ram Jewan Kairi*, 20 Calc., 101). But this rule does not apply to a case in which the land is found to belong to the plaintiff and in the course of which suit, as they had done in a previous one, the defendants deny that they are the plaintiff's tenants. In such circumstances they have no right to remain upon the land (*Nil Madhub Basu v. Anant Ram Bagdi*, 2 C. W. N., 755). This was followed in *Faiz Dhali v. Aftabudin* (6 C. W. N., 575), in which it was said that the defendant was estopped by a matter of record from pleading that he was plaintiff's tenant. The correctness of both these decisions was doubted in *Mallika Dasi v. Makhm Lal Chaudhuri* (2 C. L. J., 389 : 9 C. W. N., 928) in which it was laid down that the doctrine of forfeiture by disclaimer of landlords' title does not apply to raiyats'

tenancies and the principle of estoppel cannot be applied to make the doctrine of forfeiture indirectly applicable to such tenancies (*Mallika Dasi v. Makham Lal Chauduri*, 2 G. L. J., 389 : 9 C. W. N., 928). But in a still later case (*Rangati v. Pran Hari Sil*, 3 C. L. J., 201,) the decisions in *Nil Madhab Basu v. Anant Ram Bagdi* and *Faiz Dhali v. Aftabudin*, were adhered to. A denial of the landlord's title before the Bengal Tenancy Act was passed would operate as a forfeiture of the tenant's right (*Ananda Chandra Mandal v. Abraham Solomon*, 4 C. W. N., 42), provided the denial of title took place prior to the institution of the suit (*Nizamudin v. Mamtasudin*, 28 Calc., 135 : 5 C. W. N., 263). A denial of a right in a written statement does not give rise to a cause of action (*Madan Mohan Shaha v. Rajabali*, 28 Calc., 223 ; *Mallika Dasi v. Makham Lal Chauduri*, 2 C. L. J., 389 : 9 C. W. N., 928). A denial of the landlord's title by the holder of a service tenure works a forfeiture of his tenancy (*Ananda Moyi v. Lakshi Chandra*, 3 C. L. J., 274 : 33 Calc., 339). A suit was brought for ejectment on the ground of the tenant's denial of the existence of the relation of landlord and tenant between himself and the plaintiff. The defendant had in a previous suit denied that he was the plaintiff's tenant. The plaintiff in that suit adduced no evidence, and it was dismissed. In the present suit the defendant did not deny that he was the plaintiff's tenant : *held*, that the denial in the previous suit did not entitle the plaintiff to a decree in ejectment (*Rahamatulla v. Jitalu Das*, 11 C. W. N., c).

In a suit brought by the plaintiffs for ejectment against the defendant described as a trespasser, he repudiated the plaintiff's title and set up a title in himself. His plea was found to be fraudulent. *Held*, that he could not be allowed in second appeal to say he was a tenant, and that he was liable to ejectment as a trespasser without notice (*Sujjad Ahmad Chaudhuri v. Ganga Charan Ghosh*, 1 C. L. J., 116).

Now, by sec. 186 A, added to the Act by s. 57, Act I. B. C., of 1907, a tenant who denies his landlord's title is liable to have a decree for damages passed against him.

Remedies for illegal ejectment.—If a tenant is ejected otherwise than in accordance with this Act, he can bring a possessory suit under sec. 9 of the Specific Relief Act (I of 1877) within six months from the date of dispossession, but such a suit cannot be brought against Government. If he omits to do so, then, if an occupancy-raiyat, he can sue within two years for possession under art. 3, Schedule III of this Act, or within two years from the date of the publication of the landlord's notice of re-entry under sec. 87, in which case he is not entitled to recover merely on proof of illegal ejectment without reference to his title (*Madan*

Mohan Ghosh v. Habi, 2 C. W. N., clxxxii). If he is a non-occupancy raiyat, he can under the same section sue for recovery of possession within six months of the publication of this notice. In all other cases, the tenant can sue for recovery of possession within twelve years from the date of dispossession under art. 142, Act XV of 1877. Now, in Bengal under s. 61, Act I, B. C., 1907, every raiyat or under-raiyat if dispossessed, must sue for recovery of possession within two years of the date of dispossession.

Effect of partial ejectment.—A landlord cannot eject a tenant from part of the subject of his tenancy and claim rent for the part remaining in his possession (*Lalita Sundari v. Sarnamayi*, 5 C. W. N., 353; *Haro Kumari v. Purna Chandru Sarbogyi*, 28 Calc., 188).

Court fees.—Under sec. 7, sub-sec. 11, Act VII of 1870, in a suit to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, the amount of fee payable under the Act shall be computed according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint. Where in a suit for recovery of possession of an occupancy holding, the plaintiff sued not only the landlord, but three persons whom the landlord had inducted into the land, *held*, that the suit did not come within the provisions of sec. 7, 11 (e), of the Court Fees Act, and that the Court fee should be computed on the market value of the property (*Farzand Ali v. Lal Puri*, 32 Calc., 268).

Measurements.

90. (1). Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Measurements.
Landlord's
right to mea-
sure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

(a) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to

vary from year to year, and the rent payable depends on the area ;

- (b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation ;
- (c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Who may, and what lands a landlord may, measure.—Every landlord has a right under sec. 90 to sue for measurement (*Matangini Dasi v. Ram Das Mallik*, 7 C. W. N., 93). A landlord can measure all lands, rent-free or rent-paying, comprised in his estate or tenure, but not revenue-free land. Under the old law he could not measure revenue-free land, and apparently also not even rent free-land within the boundaries of his estate. See *Prasanna Mayi Debi v. Chandra Nath Chaudhuri*, 10 W. R., 361 ; *Rang Lal Sahu v. Sridhar Dass*, 11 W. R., 293 ; 3 B. L. R., App., 27 ; *Ghulam Khejar v. Erskine*, 11 W. R., 445 ; *Khagendra Nath Mallik v. Kanti Ram Pal*, 14 W. R., 368. He is not debarred from measuring merely because there are under-tenures, and that the land is not in the occupation of his immediate tenant (*Ran Bahadur v. Maluram Tewari*, 8 W. R., 149 ; *Tweedie v. Ran Narain Das*, 9 W. R., 151 ; *Krishna Mati Debi v. Ram Nidhi Sarkar*, 9 W. R. 331 ; *contra*, *Dwarka Nath Chakravartti v. Bhowani Kishor Chakravartti*, 8 W. R., 11).

One of two or more joint landlords cannot measure.—It is clear that under sec. 188 one of two or more joint landlords cannot measure. They must act together or by an agent authorized to act on behalf of all of them. See *Matangini Dasi v. Ram Das Mallik*, (7 C. W. N., 93) (in which case, the landlords were not joint landlords within the meaning of sec. 188), and note to sec. 188. A common manager appointed under sec. 95 can no doubt measure.

Under the old law (*i. e.*, Act VI, B. C., of 1862 and Act VIII, B. C., of 1869) it was held in many cases that a part proprietor was not entitled

to apply for measurement (*Mahomed Bahadur Mazundar v. Raj Krishna Singh*, 15 W. R., 522 ; *Muluk Chand Mandil v. Madhusudhan Bachaspati*, 16 W. R., 126 ; *Surendra Mohan Rai v. Bhagbat Charan Gangopadhyaya*, 18 W. R., 332 ; *Santiram Panja v. Baikant Paria*, 19 W. R., 280 ; *Piari Mohan Mukhurji v. Raj Krishna Mukhurji*, 20 W. R., 385 ; *Ishan Chandra Rai v. Basarudin*, 5 C. L. R., 132 ; *Babu Chaudhry v. Abidudin Mahomed*, 7 Calc., 69) ; but it was ultimately settled that he could do so, provided he made all the remaining proprietors parties to the proceeding (*Abdul Husain v. Lal Chand Mahtun*, 10 Calc., 36 : 13 C. L. R., 323).

91. (1) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

Power for
Court to order
tenant to attend
and point out
boundaries.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Sub-section (1). To what Court application should be made—Under sec. 144 (2) the application for measurement must be made to the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application was brought. Under the former law, Act VI of 1869, B. C., a single suit to measure lands could be brought against several defendants, although their rights and tenures were different (*Sashi Bhushan Banurji v. Nabo Kumar Chaturji*, 8 W. R., 94)

Sub-section (1) Appeal.—Under the former law, an appeal lay from an order for measurement made under sec. 37, Act VIII, B. C., of 1869 ; for it was held that such an order was a “decree.” But this was because in section 37, the proceeding in which an order for measurement was passed was termed a “suit” (*Brajendra Kumar Rai v. Krishna Kumar Ghosh*, 7 Calc., 684). No such expression occurs in sec. 91.

The proceeding under this section is not therefore a suit, and the order made in it not a decree, and consequently no appeal lies from such an order (*Daya Ghazi v. Ram Lal Sukal*, 2 C. W. N., 351)

Sub-section (2)—Under sec. 9 of Act VI of 1862, B. C., and sec. 37 of Act VIII., B. C., of 1869 if an under-tenant or raiyat, after the issue of an order enjoining his attendance, did not attend and point out the land, it was not competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence (see *Alimudin v. Kali Krishna Tagore*, 10 Calc., 895). But under the present Act, finality is not given to a measurement and it is open to a tenant to rebut the presumption of correctness which the court is directed to make, if he fails to attend when directed to do so (*Daya Ghazi v. Ram Lal Sukal*, 2 C. W. N., 351).

Co-sharer landlord. A co-sharer landlord who has obtained separate *kabulyats* from his tenants and deals separately with them can apply for measurement under sec. 91 (*Jognesh Prokas Ganguly v. Maniraddi*, 35 Calc., 417).

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Local measures.—Under sec. II of Act VI, B. C., of 1862 and sec. 41, Act VIII, B. C., of 1869, measurements were to be made with the standard pole of the *pargana*. Now, measurements are to be

made with the local measure by which the rights of the parties are regulated. If there is any dispute as to the nature and length of this local measure, the Civil Court will have to decide it. Sometimes, two standards of measurements are in use. In that case the local measure current in the locality or *tuppeh* in which the land is situated should be preferred (*Bhagobali Charan Bhattacharji v. Tamirudin*, 1 W. R., 224 ; *Sarbanand Pandi v. Ruchia Pandi*, 4 W. R., Act X, 32). Canungoe papers and settlement proceedings are good evidence in such disputes (*Nand Dantput v. Tara Chand Prithibari*, 2 W. R., Act X, 13).

Board of Revenue's instructions.—"The standard of measurement or *laggi* recorded in the Collectorate for the *pargana* or other local division in which the lands are situated shall be taken as the local standard of measurement under section 92 (1) of the Tenancy Act, unless another standard is set up by either of the parties, in which case the Settlement Officer will, after enquiry, decide what standard to adopt. If no standard is recorded in the Collectorate, the Settlement Officer must by enquiry, satisfy himself as to the local standard in use." (Board of Revenue's C. O. No. 16, April, 1893).

Managers.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(a) inconvenience to the public, or

(b) injury to private rights,

the District Judge may, on the application in case (a) of the Collector, and in case (b) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager :

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims,

and, if he is a co-owner of an estate, unless his name
 VII (B. C.) of 1876. and the extent of his interest are registered under the Land Registration Act, 1876.

Extended to the districts of Cuttack Puri and Balasore (Not., Jan. 27th, 1906).

Former law.—The state of the former law as to the appointment of managers in cases of disputes between co-owners and the reasons for the enactment of the following sections which are founded on the Bill framed by the Rent Commission, are described in the report of that body as follows :—"In 1812 it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the Revenue authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Court of Judicature, it shall be competent to the Zillah Judges to appoint a person duly qualified and under proper security to manage the estate, that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Reg. V. of 1812, sec. 26). The Judge was also competent, upon the representation of the Revenue authorities, or of any such person as aforesaid to remove any manager so appointed (ibid, sec. 27). A subsequent Regulation (V of 1827) enacted that when the Zillah Court thought it just and proper under the provisions of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector, directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Reg. V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector, directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative. Such being the present state of the law a majority of us have thought that this fragment might well be repealed, and a complete set of effective provisions substituted therefor." (Rent Commission Report, Vol. 1. paras. 135 and 136, p. 68). The sections of Reg. V of 1812 remaining in force are repealed by Schedule I of this Act.

Co-sharer.—A co-sharer who has opened a separate account or makes separate collection for his share is liable to have his share taken over by

the common manager unless his share is separated by metes and bounds (*Kumar Saradindu Roy v. Collector of Rangpur* 11 C. W. N., 1143).

Procedure prescribed in the case of a multifarious application.—In a case in which one application was made jointly by twelve of the co-sharers of a certain property under this section calling upon the four remaining sharers in the property to show cause why a common manager should not be appointed to certain property consisting of 243 estates or *taluks*, of which about 60 bore separate numbers on the Collector's Land Register, whilst other portions of the property were *taluks* and dependent tenures, *howlahs* and *raiya* holdings, and therefore, did not appear in the Collector's Register at all, it was laid down by the High Court, (1) that there need not be as many applications as there were estates or tenures mentioned in the application, but that, in the circumstances, the District Judge should call upon the applicants to state whether all of them were entitled in common to the various estates and tenures mentioned in the application, and, if not, to divide themselves into as many groups as there might be properties held by them in common, and in this latter case, it would be necessary that each group of shareholders should put in separate applications; (2) that if such separate applications would have to be put in and not otherwise, separate Court fees should be levied upon each application; and (3) that the notice in the case of tenures would be as provided by section 93 of the Act; it would be of the same character and to the same effect as in the case of estates (*Fazal Ali Chaudhri v. Abdul Majid Chaudhri*, 14 Calc., 659; *Kumar Saradindu Roy v. Collector of Rangpur*, 11 C. W. N., 1143). When the owners are not the same an appointment should be made for each group of properties although the same manager may be appointed for all. The District Judge can consider the propriety of an appointment at any stage of the proceedings (*ibid*).

Appeal.—An application under this section is not a suit within the meaning of sec. 143, as the operation of that section is confined to suit between landlord and tenant. A proceeding under section 93 is not between landlord and tenant, but a proceeding initiated by some third person, who does not fill either of these positions. Under these circumstances, an order rejecting an application under sec. 93 is not appealable (*Hossain Baksh v. Mutukdhari Lal*, 14 Calc., 312).

Suit.—A suit is maintainable for recovery of possession against a common manager who has been irregularly appointed, without a previous complaint to the District Judge (*Indu Bhusan Bose v. Annapurna Mitra*, 6 C. L. J., 216).

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager if cause is not shown.

Extended to the districts of Cuttack, Puri and Balasore, (Not., Jany. 27th, 1906).

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to appoint manager if order is not obeyed.

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

Extended to the districts of Cuttack, Puri and Balasore (Not., January 27th, 1906.)

Rulings under this section.—On an application under section 93 being made to a District Judge, he by consent of parties directed the estate to be managed by the Court of Wards. The Court of Wards took over the estate, but subsequently refused to act, and the Board of Revenue directed that the estate should be released. The

District Judge then issued notices to the co-sharers under sec. 93, calling on them to show cause why a common manager should not be appointed. The co-sharers appeared and objected, but one of them stated that he and the representative of certain minor co-sharers had agreed to appoint a private person manager of their estates. The District Judge, then, without holding any enquiry or taking evidence, passed an order purporting to be under sec. 95 of this Act, appointing the private person common manager temporarily until the co-owners should take steps under sec. 99 to satisfy the Court that they were in a position to manage the estate properly. He subsequently passed two orders on two separate applications by two of the co-sharers for the release of the estate, refusing to release it, as he was not satisfied that the management would be conducted by the co-owners without injury to the rights of the minor co-sharers. It was held that the order of the Judge appointing the private person common manager, and his subsequent order refusing to release the estate were not legally made. They were therefore, set aside (*Ganodu Kanto Ray v. Prohabati Dasi*, 20 Calc., 881.) A common manager cannot be appointed by consent of parties. The District Judge before he can make the order must find that there is a dispute likely to cause inconvenience to public or injury to private rights existing between the co-sharers (*Kali Charan Ash v. Purbati Charan Ash*, 4 C. L. J., 564). When a common manager has resigned, the District Judge cannot appoint a new common manager without recourse to the provisions of ss. 93 and 94 (*Dwarkanath Mitra v. Bankutesh Lal Mitra*, 10 C. W. N., 437). This case was dissented from in *Dwarkanath Mitter v. Bankutesh Lal Mitter*, 7 C. L. J. 109, where it was held that the abdication of the manager has not the effect of restoring the state to the owners and the powers of the District Judge are not exhausted by the appointment of a manager and he can appoint a successor without a fresh application in a fresh proceeding. There is no provision in this Act authorising a District Judge, when an order, under sec. 95 of this Act appointing a common manager has been made, to institute an enquiry as to the existence of certain accounts and papers and to examine persons on oath in such a proceeding, and a person giving false evidence in such a proceeding does not commit an offence under sec. 193 or sec. 199, Penal Code (*Abdul Mazid v. Krishna Lal Nag*, 20 Calc., 724). A common manager was appointed under the provisions of this section with the consent of the co-owners. The share of one of the co-owners was then let out in *izara* to some of the other owners. After the *izara* had come to an end, he gave a *patni* lease of his share to a third person, who began to collect, or to attempt to collect, the rent due to him as *patnidar*. It was held that he was bound by the

order appointing the common manager, as he took *patni*, knowing that the property was in charge of a common manager, appointed by an order of the Court, an order which under clause (3) of section 98 would have the effect of preventing any of the co-owners from themselves realising the rents due to their respective shares, and the *patnidar* was in no better position than the shareholder from whom he obtained the *patni* (*Jagat Chandra Chaudhri v. Golak Chandra Ghosh* 23 Calc., 522). A person appointed to be manager of an estate under the provisions of this section must have his name registered under sec. 78 of the Land Registration Act before he can recover rent from the tenants of the estate of which he has been appointed manager (*Mokbul Ali Chaudhri v. Girish Chandra Kundu*, 22 Calc., 634).

Appointment complete.—Just as in the case of a receiver the appointment becomes complete when the required security has been given and possession taken under the order (*Dwarkanath Mitter v. Bankutesh Lal Mitter*, 7 C. L. J., 109).

A common manager, appointed under this section has power to mortgage property with the permission of the District Judge. While the common management exists, the powers of the co-owners must be regarded as in abeyance, and therefore a mortgage created by a co-owner during the existence of the common management cannot in any way interfere with, or derogate from, the rights created under any transaction made by the common manager with respect to the joint properties (*Amar Chandra Kundu v. Golak Chandra Chaudhri*, 4 C. W. N., 769). A common manager is competent on behalf of the co-owners to sue for the recovery of possession of land (*Sibo Sundari Ghosh v. Raj Mahon Guho*, 8 C. W. N., 214).

96. The Local Government may nominate a

Power to nominate person to act in all cases under clause (b) of last section.

person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of the last foregoing section ; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

Extended to the districts of Cuttuck, Puri and Balasore (Not., Jany-27th 1906.)

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

The Court of Wards Act 1879, applicable to management by Court of Wards.

* Extended to the districts of Cuttuck, Puri and Balasore (Not., Jany. 27th 1906).

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge, from time to time, directs.

Provisions applicable to manager.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

Extended to the districts of Cuttack, Puri and Balasore (Not., Jany. 27th, 1906).

The powers given by section 98 of the Bengal Tenancy Act to a manager of joint property appointed under section 93 "for the purposes of management" include the power to mortgage or to sell the property.

The restraint put upon the co-owners by section 98, sub-section (3) of the Act, whilst the estate is under management, is co-extensive with the power conferred on the manager : it does not extend to the exercise of individual rights.

Where one of the co-owners of an estate under management mortgaged his share, which in execution of a decree on the mortgage was purchased by the mortgagee : *held*, that the mortgagee thereby became a co-owner under the manager, and as such was entitled to the benefit of a decree for redemption in a suit on a mortgage of the estate by the manager (*Amar Chandra Kundu v. Shoshi Bhusan Roy*, 31 Cal., 305 : L. R., 31 I A., 24 : 8 C. W. N., 225).

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Extended to the districts of Cuttack, Puri and Balasore (Not., Jany. 27th, 1906).

There would seem to be nothing to prevent a District Judge acting of his own motion under this section, without being moved to do so by any of the persons concerned, provided he is satisfied on the point referred to.

100. The High Court may, from time to time make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

Extended to the districts of Cuttack, Puri and Balasore (Not., Jany. 27th, 1906).

The High Court's rules under this section are printed in Appendix III.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

The whole of the provisions of the former Chapter X were extended to Orissa by Notification of Sept. 10th, 1891. The present Chapter X has been introduced by the Bengal Tenancy (Amendment) Act, III, B. C., of 1898, which has been extended to Orissa by Notification of Nov. 5th, 1898. It has been considerably modified by Act I, B. C., of 1907, and Act I, E. B. C., of 1908.

Modifications in this Chapter introduced by the Bengal Tenancy (Amendment) Act of 1898.—The provisions of the Chapter, as they originally stood in the Act, have been greatly modified by the Bengal Tenancy (Amendment) Act of 1898. The circumstances which led to the passing of this Amending Act are as follows. Very shortly after the commencement of the operation of Act VIII of 1885, very great difficulties were experienced in settling rents under Chapter X, more especially when its provisions were applied to the settlement of rents on a large scale. These difficulties were partly due to defects in the provisions of the Chapter itself, which did not allow of the publication of a draft record as a preliminary to the settlement of rent, but required rents to be settled before the publication of even a draft of the record. They were also partly due to the fact that while Revenue officers in settling rents and deciding disputes regarding entries in the record-of-rights were bound to adopt the cumbrous and lengthy procedure of the Civil Courts, the High Court in interpreting the provisions of the Chapter, held that Revenue officers in proceedings for the settlement of rent had no jurisdiction to decide questions concerning the civil rights of the parties, and that the decisions of Revenue officers in such matters had no finality and might be subsequently questioned and set aside by suits in the Civil Courts.

These difficulties attracted the attention of both Sir Charles Elliot and Sir Alex. Mackenzie, while holding the office of Lieutenant-Governor of Bengal, and shortly after the commencement of the term of Government of the latter, *viz.*, in May, 1896, he submitted to the Government of India two alternative bills to remedy these defects, according to the first of which "revenue officers were given a fairly free hand in settling rents and were relieved from the necessity of complying with the

formalities of the Civil Procedure Code, and treating the case of each individual raiyat whose rent was altered as a separate suit. But the Civil Courts were to retain the ultimate jurisdiction in all matters of status, right and title." In the second Bill certain alterations were proposed tending "to simplify the procedure and at the same time to give to the decisions of the Revenue Officers that finality which the framers of the Tenancy Act intended them to have." The first of these Bills was approved by the Government of India. It was accordingly introduced into Council on the 3rd April, 1897.

At the time of the introduction of this Bill it was not intended to differentiate between the procedure for the settlement of rents in Government, and that in private estates. But after the introduction of the Bill into Council certain representatives of the *zamindars* objected to the proposed withdrawal of the jurisdiction of the Civil Courts in the settlement of rents in private estates. The Bill, as originally introduced, was therefore recast in the course of its progress through Council and the procedure for the settlement of rents in Government estates and other temporarily settled estates was made quite distinct and separate from that for the settlement of rents in permanently settled estates. The new system was extended only to the former (see Part II of this Chapter); while the existing law, with certain slight modifications designed to secure greater finality for the decisions of the settlement officers, was maintained in respect to the settlement of rents in estates of the latter class (see Part III of this Chapter). The following extract from the Statement of the Objects and Reasons for the Bill, while showing its aims and intention so far as they relate to this Chapter of the Act explains what the system for recording rights and settling rents was under Chapter X, as originally passed, and what the system now is under the modifications introduced by the Amending Act as regards the settlement of rent where a settlement of land revenue is being or is about to be made—in other words, so far as Part II of this Chapter only is concerned.

"The aims and objects of this Bill", (so far as they relate to Chapter X), "are—(1) to clear up doubts and difficulties of procedure which have arisen in the course of experience in the working of Chapter X of the Bengal Tenancy Act, 1885; (2) to facilitate the settlement of rents when undertaken on a large scale, either for the purpose of settling land revenue or on the application of private individuals.

"As to point (1), the intention of the framers of the Tenancy Act, as explained in Council by Sir Stuart Bayley, when presenting the report of the Select Committee, clearly was that all disputes affecting the record of rights or fixation of rents were to be formally and finally decided by the Revenue Officer, subject only to appeal to the Special Judge, and to a second appeal to the High Court in certain specified cases. Entries in the record,

which were not disputed up to the time of final publication of the record, were to be presumed to be correct till the contrary was proved. If a dispute as to any entry in, or omission from, the record arose, it was to be decided by the Revenue Officer, and his decision was to have the force and effect of a decree. So that every entry in the record as finally published was to have attached to it either (a) the presumption of correctness, or (b) the force and effect of a decree of a Civil Court. Objections might be made at any time during the publication of the draft record, which the Revenue Officer was to summarily hear and consider, and disputes raised at any time before the final publication of the record were to be heard and decided. The distinction between an objection and a dispute was not, however, clearly defined, and the result has been that the Civil Courts have in some cases held that the Revenue Officer is bound to hear, as civil suits, trifling objections which can be adequately disposed of summarily, to the satisfaction of the parties, without the expense and delay entailed by the formal procedure of a civil suit.⁽¹⁾ On the other hand, where Revenue Officers have heard and decided disputes, following the procedure of the Civil Procedure Code, in which cases it was intended that their decisions should, subject to appeal to the Special Judge, be *res judicata* between the parties, the Civil Courts have in some cases held that their decisions, though not appealed against, were not *res judicata*, that no finality attached to them, and that it was open to the parties to re-open the questions decided in the ordinary Civil Courts.⁽²⁾

“Further, the Courts have held, where a survey is ordered to be made, and a record-of-rights prepared, of a particular estate or local area, that the Revenue Officer has no jurisdiction to hear and decide the dispute, ⁽³⁾ and that when a dispute arises as to whether land claimed rent free was properly so held or not, the Revenue Officer has no authority to hear and decide the dispute, ⁽⁴⁾ and again that when a dispute arises as between one landlord and another landlord, or one tenant and another tenant, regarding the ownership or occupation of land, the revenue Officer has no authority to hear and decide the dispute. ⁽⁵⁾ It has, in short, been held the Revenue Officer can only hear and decide a dispute between a landlord and tenant when the relationship of landlord and tenant is proved or admitted to exist.

“The effect of these decisions is to curtail to a very great extent the powers of the Revenue Officer to decide the disputes arising out of his proceedings, to leave gaps in the record-of-rights, and to drive the parties to litigation after the Revenue Officer has left the ground, even as regards matters which he has nominally decided.

(1) See note to section 106.

(2) See *Pandit Sirdar v. Meqan*, 21 Cal., 378; *Karim Khan v. Brajo Nath Das*, 22 Cal., 244; *Secretary of State v. Kajimaula*, 23 Cal., 237, and *contra*, *Iskhat Saha v. Jata Nandan Rai*, 17 Cal., 721.

(3) See *Narayan Nath Rai v. Srinath Sahel*, 19 Cal., 641; *Bholaanathi Doh v. Bhagwan Chandra Rai*, 19 Cal., 643.

(4) See *Padmamul Singh v. Bano*, 20 Cal., 377; *Secretary of State v. Netai Singh*, 21 Cal., 38; *Karim Khan v. Brajo Nath Das*, 22 Cal., 244.

(5) *Pandit Sirdar v. Meqan*, 21 Cal., 378.

"That this was not the intention of the framers of the Act is shown by the following extract from Sir Stuart Bayley's speech in Council, in presenting the Report of the Select Committee on the Tenancy Bill as passed :—

"Under the scheme, therefore, as sketched out in the original Bill, it will be observed (1) that the Revenue Officer, in recording rights, could not decide any dispute which might arise, and consequently his record could be of very little value ; (2) that the Settlement Officer, though he could decide whatever disputes came before him, could only deal in a preliminary sort of way with a large class of disputes, which might afterwards be tried out by a regular suit in a Civil Court ; (3) that, though no settlement can in the nature of things be undertaken without the previous preparation of a record-of-rights, the two processes were unconnected in the Bill, and were treated as essentially separate and distinct.

"I need not take you through the successive steps by which the procedure was altered, first in the Bill No. 11 of last year, a description of which will be found in paragraphs 71 to 77 of our preliminary report, and then in the Bill of this year, as explained in paragraph 42 of our final report. It will be sufficient if I explain to you the final result of our discussions as embodied in the bill now before you. First, then, we have amalgamated the two processes. It was obvious that on a Revenue Officer beginning to record rights he would find himself face to face with numerous cases in which on one side or the other the status of the raiyat, the area of the holding, the amount of the rent payable, were the subjects of dispute. Unless he could deal with these disputes his record would be of little value and it was obviously absurd to empower one officer to settle questions of status and area, and then to send in another to settle questions of rent.

"It seemed equally unreasonable to empower a Revenue Officer, with all the parties and witnesses before him, to decide disputes, and to allow the whole matter to be re-opened *de novo* and fought out from the very beginning in a Civil Court. At the same time we wished in no way to diminish the security which parties now have in the decision of their cases by the most competent Courts, and in the right of appeal to the highest Court in the country.

"What we have done, then, has been to give the Revenue Officer, in the first instance, power to settle *all* disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts ; where a dispute arises, he will decide it on the same grounds by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal, like that of the ordinary Civil Court, to a Special Judge, who may or may not be the Judge of the district, and will be subject to a further special appeal to the High Court. In appeal, the High Court may settle a new rent, but in so doing is to be guided by the other rents shown in the rent-roll. In other words, there can be no second

appeal to the High Court merely on the ground that the rent has been pitched too high or too low, but if a second appeal is preferred, as it may be on the ground that the Special Judge, owing to some error on a point of law has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and if the appellant succeeds, the High Court can, without altering the rate, reduce, or increase the rent, as the case may be.

'The decision of the Revenue Officer in disputed cases, subject to these appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years.'

'It is clear that the decision of the Civil Courts above referred to are not in accord with the intention of the framers of the Act expressed in the preceding extract, and it is thought that if the decisions of Revenue Officers are not, subject to appeal to the Special Judge, have nality on all questions that come before them, it is desirable to relieve them altogether of the duty of deciding disputes as civil suits, and to confine them, in the first place, to the preparation of the record of existing facts, rents and status. This record will be prepared, after careful investigation, under such rules as the Local Government may prescribe. It will be published in draft, objections made to any entry in or omissions from it will be carefully considered and disposed of under such rules as may be prescribed by Government; then, it will be finally published and the presumption of correctness will be attached to entries made in it. If the parties afterwards wish to dispute the correctness of any entry or omission, they can do so in the Civil Courts, restrictions on resort to the Courts being imposed only in the case where the entry relates to a rent settled.

'As to the second object mentioned above, section 107 of the Act provides that in all proceedings for the settlement of rents under Chapter X, the Revenue Officer shall, subject to rules made by the Local Government adopt the procedure laid down in the Code of Civil Procedure for the trial of suits. This implies that each individual case must (subject to modifications made by the Government rules for joinder of tenants holding under the same landlord in the same village) be dealt with separately, a separate record being made, and evidence being separately recorded in each case. When a settlement of rents is being made on a great scale, as is necessary when a settlement of revenue is being made of a large area or in a large private estate, it is apparent that to make the rent of each individual tenant the subject of a separate suit must involve great waste of time and money. If an enhancement or reduction of rent is claimed on the ground of rise or fall of prices since the rents were last fixed, it is obvious that the alteration in prices, if once established for a local area, would affect all tenants in that local area whose rents were last settled at the same time, and it would involve unnecessary waste of time and money to record the evidence over again and allow it to be disputed afresh in each individual case.

"It has always been recognised that Government officers, in settling rents for the purpose of ascertaining the assets on which revenue is to be based in temporarily settled estates, should have more discretion in the matter of altering rents than was allowable to private individuals in suits in the Civil Courts. The Bengal Government, however, in 1885, with a view to showing that they claimed nothing in the way of enhanced rents in their own estates, or in estates under settlement of revenue, which they were not prepared to concede to private landlords, consented to have the same rules and the same procedure applied to their own estates as were proposed for fixation of rent in private estates; but apparently the difference was not sufficiently considered between the difficulties of a settlement of rents on a great scale and a settlement of rent of individual tenants by a Revenue Officer or Civil Court. In individual cases it is easy to follow the procedure of the Civil Procedure Code but where hundreds of thousands of tenants' rents have to be settled, it is most difficult, if not impossible, to follow the Civil Procedure Code, and to complete the proceeding within a reasonable time at a reasonable expenditure.

"What is proposed is a procedure which will facilitate settlement of rents on a large scale without unnecessary expense, and without materially altering the substantive provisions of the Act regulating enhancement or reduction of rents."

The above extract, so far as it deals with the settlement of rents, applies only to settlements when a settlement of land revenue is being or is about to be made. The details of the procedure to be adopted in such settlement are more fully explained in the commencement of Part II of this Chapter.

The Bill was on the 26th Feby, 1898, referred to a Select Committee, who presented their report on the 19th March, 1898. Certain trifling modifications were made on the Bill being considered in Council. It was passed on the 2nd April, 1898, and received the assent of the Governor-General on the 3rd May. It was first published in the *Calcutta Gazette* as Act III, B. C., of 1898 and came into force on the 2nd November, 1898.

Part I.—Record-of-Rights.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made

Record-of-rights.
Power to order
survey and pre-
paration of re-
cord-of-rights.

and a record-of-rights be prepared, by a Revenue Officer, in respect of the lands in [any] local area, [estate or tenure or part thereof].

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following, namely :—

[(a) where—

(i) the landlord or tenants, or

(ii) a proportion of not less than one-half of the total number of landlords, or

(iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or

(iv) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses as the Local Government directs ;]

(b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally ;

(c) where the local area, [estate or tenure or the part thereof] belongs to, or is managed by, the Government or the Court of Wards [or a Manager appointed by the District Judge under section 95 ;]

- (d) where a settlement of land-revenue is being or is about to be made in respect of the local area, [estate or tenure or of the part thereof].

[*Explanation 1.*—The term “settlement of land-revenue,” as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

[*Explanation 2.*—A superior landlord may apply for an order under this section notwithstanding that his estate or part thereof is leased to a tenure-holder].

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

[(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the Local Government.]

Sub-section (1) has been extended to the Chota Nagpur division except Manbhum (Not., Feby. 9th, 1903), but the words “in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned” have been omitted. Sub-sections (3) and (4) have been extended to the Chota Nagpur division except the district of Manbhum without modification (Not., Feby. 9th, 1903).

The words in light brackets in sub-sections (1), (2) (c), (2) (d), the explanations (1) and (2) and sub-section (4) of this section have been inserted and added by the Amending Act, III, B. C., of 1898.

The clause (a) to sub-section (2) in heavy brackets and the words in heavy brackets “or a Manager appointed by the District Judge under section 95,” added to clause (c), sub-section (2) have been inserted and added by Act I, B.C., of 1907 and Act I, E. B. C., of 1908.

The old clause (a) to sub-section (2) ran as follows :—

- (a) Where the landlords [or tenants] or a large proportion of the landlords or of the tenants apply for such an order and deposit, or give security for such amount for the payment of expenses, as the Local Government directs ;

There being no judicial determination as to what was meant by “a large proportion of the landlords or of the tenants” in this clause, it was ruled by

Government, on the authority of the Advocate-General, that one half of the landlords was a large proportion of them within the meaning of cl. (a) of this section, as it stood before the amendment (See Government of Bengal's No. 2401-931 L. R., dated December 6th, 1886, to Secretary, Board of Revenue).

Sub-section (2). Clause (a).—In the Notes on Clauses to the Bill of 1960 it was said :

“The words “a large proportion of the landlords or of the tenants” in section 101 (2) (a) are vague and have given rise to differences of interpretation. It is desirable that the proportion of landlords or tenants, who may apply for a survey and record-of-rights, should be more clearly defined ; one-fourth has been adopted as a reasonable proportion. It is always open to the Government to grant or refuse such an application if it should think fit, and the Government has also full discretion in regard to the apportionment of the costs of the operations under section 114. In the case of co-sharer landlords, either a fourth of the total number, or a co-sharer or co-sharers representing a fourth of the total interests, should be permitted to apply. There is sometimes difficulty in getting co-sharers to join in such applications, and it is thought equitable that a considerable minority, such as one-fourth, should be permitted to submit an application for the consideration of the Government.”

The Select Committee in their report observed :

“We have raised the proportion of landlords which is to be requisite for a successful application to one-half. It is represented that it should not be in the power of the minority to involve the majority in the considerable expenses which a survey and preparation of a record-of-rights entail.”

Payment of expenses.—For the rules for the deposit of the costs of a survey and record-of-rights, see Board's Settlement Manual, 1908, Part I, chap. VI and Part II, chap. XIV.

Government will not publish the notification until the Board of Revenue has reported that the costs have been deposited (G. O. No. 1799, dated 28th April, 1899).

Sub-section (2). Clause (c).—In the Notes on Clauses to the Bill of 1906 it is said :

“The addition to section 101 (2) (c) made by the clause will enable a survey and record-of-rights to be made in the case of an estate placed under a manager appointed by the District Judge under section 95. The proper management of such estates will often be greatly facilitated by survey and the preparation of a record-of-rights. It seems reasonable that they should be placed on the same footing as estates taken over by the Court of Wards.”

Sub-section (2). Clause (d).—The words “or is about to be made” occurring in this clause were first introduced into the clause by Bengal Act V of 1894, s. 1, (now repealed) in order to legalize settlement operations in Orissa before the expiry of the period for which the land revenue of that province had been fixed.

Sub-section (2). Explanation 1.—This explanation is taken from s. 2, Act V, B. C., of 1894. Its object is to

“make clear what was the intention of the present law, namely, that a settlement of rents in estates held direct by Government is included in the term settlement of revenue, and, therefore, that when a record-of-rights of such estates is prepared, a settlement of the rents of all tenants can be made.” (Statement of Objects and Reasons, Bill I, para. 23).

But, under the proviso to section 104, which was added by section 24, Act I, B. C., of 1907, it is not necessary to settle the rents of all tenants, when a record-of-rights is being prepared in an estate or tenure belonging to Government, if it does not appear expedient to the Local Government to do so.

Sub-section (2). Explanation 2.—The object of this explanation is explained in the Objects and Reasons for the Bill, para. 22, as follows :—

“Doubts have been raised whether, when a proprietor has leased his estate to a farmer temporarily, he can apply for a survey and record-of-rights or settlement of raiyats’ rents. The grounds of these doubts are that section 104 (2) of the Act speaks only of the landlord applying and that the farmer is the raiyat’s immediate landlord. It is desirable that a proprietor should not be debarred from obtaining a record-of-rights or settlement of rents merely because he has temporarily sub-let his estate. The explanations make it clear that he is not so debarred.”

The explanation, it may be added, was framed and introduced to meet a case which actually occurred, in which the tenants of an estate colluded with the temporary tenure-holder, paid him heavy *salamies* or bonuses and induced him to reduce their rents to nominal amounts. Under the former law, the proprietor could in these circumstances do nothing, though he knew that on the expiry of the temporary tenure-holder’s lease, the reduced rents accepted by the tenure-holder would be binding (or practically so) upon him.

Sub-section (4). Processes of survey and record-of-rights :—The processes ordinarily to be comprised in a survey, record-of-rights and settlement of rents under this Chapter are enumerated in rule 3, Chap. VI, of the Govt. rules under this Act (Appendix I : see also the Board of Revenue’s Settlement Manual, of 1908, Part I, Chap. I, r. 5, p. 2.)

What the record-of-rights is to consist of and to contain.—

According to rule 8, Chap. VI of the Govt. rules under this Act, the record-of-rights to be published under sec. 103A of this Chapter shall consist of the *khewat* (or abstract record-of-rights of proprietors and tenure-holders) and the *khatian* (or detailed record of each tenancy). Forms of these records taken from the Board of Revenue's Survey and Settlement Manual, Appendix G, are printed in the Appendix II to this book. Rules 9 and 10 of Chapter VI of the Govt. rules under the Act specify what each of the records is to contain. According to sec. 2 (2) of Act III, B. C., of 1895 (The Land Records Maintenance Act), by the term record of rights "shall be understood the settlement record of tenant-rights called the *khatian* or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue to form the record-of-rights for any district or part of a district. A record-of-rights includes entries duly made in a register of mutations." But this definition applies only to proceedings under Act III, B. C., of 1895. It was framed with the view of excluding from the operation of that Act mutations of proprietary interests, which were considered to be sufficiently provided for by the Land Registration Act (VII, B. C., of 1876). *Khewats* were, therefore, excluded from the record-of-rights, as defined in Act III, B. C., of 1895. (1)

When a settlement of land revenue is being or is about to be made under part II of this Chapter, and a settlement rent roll is prepared it is to be incorporated with the record-of-rights (sec. 104 F). But this has to be done before the record-of-rights is finally published (see sec. 103A). When a settlement of land revenue is not being or is not about to be made, and rents are settled under part III of this Chapter, then, the Revenue Officer is to note in the record-of-rights all rents settled by him under sec. 105 and all disputes decided by him under sec. 106 (sec. 107.) This has to be done after the final publication of the record-of-rights. The record-of-rights published, whether in draft or finally contains, when a settlement of land revenue is not being or is not about to be made, only entries of rents recorded as payable at the time the record-of-rights is being prepared.

(1) This Act is of very limited application. At present it has only been made applicable to the thanas of Hajipur in the district of Muzaffarpur and Bettiah in the district of Champaran (see Govt. Not., No. 5307, L. R., dated 9th Dec. 1895) and to pargana Sujamutha i thanas Bhugwanpur and Nandigram in the district of Midnapur (see Govt. Not., No. 460 L. R., dated 21st Nov. 1896). Rules in 4 forms under the Act were published with Govt. Not., No. 5306, L. R., dated 9th Dec. 1895 (the *Calcutta Gazette*, Dec. 11th, 1895, Part I p. 1170). These rules have been amended on the 9th Dec. 1895 and modified by Govt. Notifications, No. 4055, L. R., of 13th Oct., 1896, and 1 Nos. 312 L. R., of 23rd, Feby, 1897 and 1637, L. R., dated 15th April, 1897.

102. When an order is made under section 101,
Particulars to be recorded. the particulars to be recorded shall be specified in the order, and may include either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant [or occupant];
- (b) the class to which [each tenant] belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, [settled raiyat], occupancy-raiyat, non-occupancy raiyat or under-raiyat, and if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation [and] quantity and [one or more of the] boundaries of the land held by [each tenant or occupier];
- (d) the name of [each tenant's] landlord;
- [(dd) the name of each proprietor in the local area or estate];
- (e) the rent payable [at the time the record-of-rights is being prepared];
- (f) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

[(*gg*) the rights and obligations of each tenant and landlord in respect of—

- (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other source of supply, and
- (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land];
- (*h*) the special conditions and incidents, if any, of the tenancy;
- [(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared];

For Eastern Bengal and Assam for the words “attaching to” read “over or appurtenant to.”

- [(*j*) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority.]

The first sentence of this section has been extended to the Chota Nagpur division except the district of Manbhum (Not., Feby. 9th, 1903), but the words “and may include” to the end of the section have not been so extended.

The words in light brackets in this section have been added by the Amending Act of 1898.

Clauses (*dd*), (*gg*) and (*i*) have been added and the former clause (*i*) has been re-lettered (*j*) by sec. 20, Act I, B. C., of 1907 and Act I, E. B. C., of 1908. And it is further provided that clause (*gg*) shall be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898.

Clause (b).—The enumeration of tenants in this clause, as it originally stood, was defective, as it did not include “settled raiyats.” The term “occupancy-raiyat,” used in the Act, does not cover “settled raiyats.” See notes to sects. 4 and 20, pp. 52, 97.

Clause (c).—“One or more of the boundaries’ is substituted for ‘boundaries’ *i. e.*, all the boundaries. It is sometimes unnecessary to encumber the record with all the four boundaries of all the fields, and, in such cases, it adds unnecessarily to the expense to do so.” (Statement of Objects and Reasons, para 23).

Clause (dd).—In the Select Committee’s report on the Bill of 1906 it is said: “It is important that the record should show the name of each proprietor. It was probably contemplated that clause (*d*) of section 102 would be sufficient, but it does not cover the case of an owner who has no tenants.”

Clause (e).—“The words ‘at the time the record-of-rights is being prepared’ have been added to make clear the meaning of the law, as doubts have been raised whether ‘the rent payable’ means the rent payable in future or in the past, or at the time the record is being prepared.”—(*Id*).

Clause (gg).—In the Notes on Clauses of the Bill of 1906, it is said :

“It has been the practice in most surveys and records-of-rights made within recent years to include among the particulars entered in the record-of-rights, a record of the rights and obligations of landlords and tenants with regard to the use of water for agricultural purposes. Conflicting opinions have been given by the legal advisers of the Government as to whether such a record can be made under the present section 102. Such records have been found useful in areas in which irrigation is a matter of importance ; this clause therefore, is intended to authorise the making of such records in future, and also to place beyond doubt the validity of those which have already been made.”

This last sentence refers to the provision that this clause shall be deemed to have been inserted in the Act from the commencement of the Bengal Tenancy (Amendment) Act, 1898.

Clause (i).—In the Report of the Select Committee on the Bill of 1906 it is said :

“It has been brought to our notice that doubts have been expressed regarding the authority of the Revenue Officer, making a record-of-rights under Chapter X of the Act, to include in such record entries relating to rights of way or other easements. Such matters, though not special conditions or incidents of a tenancy, may materially affect its value, and we consider that it is advisable that they should be included in the record-of-rights.”

The new clause counteracts the ruling of the High Court in the case of *Haro Mohan Chauramani v. Pran Nath Mitter*, (27 Calc., 364), where it was held that the existence of a right of way was not one of the conditions or incidents of a tenancy, and that a Settlement Officer had no jurisdiction to make an entry in respect of an alleged right of way in a record-of-rights.

Clause (j).—This clause “is added to make it quite clear that the Revenue Officer has authority to ascertain and record whether land is held rent-free or not. He had this authority under the old law of settlement.”—(*Id.*) But in *Radha Kishor Manikya v. Durga Nath Bhuttacharjya* (32 Calc., 162), decided under Chapter X before it was altered by the addition of this clause, it was *held* that the words “every settlement of rent or decision of a dispute by a revenue-officer” are applicable only to those cases which a revenue-officer has jurisdiction to try, and are not applicable to a decision of a Settlement Officer as to the validity of a *lakheraj* title under section 104 of the Act. The proceedings of the Revenue Officer under this clause will be of a summary and not of a judicial character. Any one interested who wishes to call in question the correctness of the particular record by the Revenue Officer may raise an “objection” before him (sec. 103A).

Remedies of persons affected by settlement proceedings. When the particular recorded under this clause is followed by an entry in, or an omission from a settlement rent roll, which is only prepared when a settlement of land revenue is being, or is about to be made, any one aggrieved by such entry or omission may, before the final publication of the settlement rent roll,

- (1) raise an “objection” before the Revenue Officer (sec. 104E), and
- (2) appeal against his decision to the Superior Revenue authority prescribed by Government to hear such appeals (sec. 104G).

After the settlement rent roll has been incorporated with the record-of-rights, and the latter has been finally published, any person aggrieved by an entry in, or an omission from it, may also

- (3) institute a suit in the Civil Court under section 104H, or
- (4) institute a declaratory suit under sec. 111A.

When the particular recorded under this clause is recorded in the course of a settlement in which a settlement of land revenue is not being, or is not about to be, made, then either the landlord or the occupant of the land concerning which the particular is recorded may

- (1) within two months of the date of the certificate of the final publication of the record-of-rights, apply for a settlement of a fair and

equitable rent for the land in the course of which certain issues may be framed and decided (secs. 105 and 105A),

- (2) appeal against the Revenue Officer's settlement of the rent or decision of the issues decided under section 105A, to the Special Judge [sec. 109A (2)],
- (3) within three months from the date of the certificate of final publication institute a suit before the Revenue Officer in respect of any matter other than the settlement of the rent or an issue raised under sec. 105A (sec. 106),
- (4) appeal against his decision to the Special Judge [sec. 109A (2)], and
- (5) present a second appeal against the Special Judge's decision to High Court [sec. 109A (3)].

[102A.] The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes regard-

Power to order survey and preparation of record-of-rights as to water.

ing the use or passage of water,

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank, or well or any other source of supply ; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant whether or not such appliances be situated, within the boundaries of such land.]

This section has been inserted in the Act by s. 21, Act I, B. C., 1907. In the Notes on Clauses of the Bill of 1906 it is said :

“The object of this clause is to give the Local Government power to make a record of the rights and obligations of landlord and tenant in regard to the use of water for agricultural purposes, independently of a general record-of-rights under section 101, when such a course appears necessary for the purpose of settling or averting disputes.”

The Select Committee in their report point out that the new section will apply to disputes between all classes of persons, not only as to the use of water, but also as to the passage of water through lands not benefitted by it.

103. On the application of [one or more of the] proprietors or tenure-holders, [or of a large proportion of the raiyats, of an estate or tenure,] and on [the applicant or applicants] depositing or giving security for the required amount for expenses, a Revenue Officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder [or large proportion of raiyats.]

Effect of this section.—Under section 101 (2)(a) the landlord, or tenants or a large proportion of either, may apply for an order for a survey and record-of-rights, but before such an order can be made the sanction of the Local Government is required. Under this section one or more of the proprietors or tenure holders or a large proportion of the raiyats may apply for the ascertainment and record of the particulars specified in sec. 102, and no sanction of the Local Government is required before such an application can be granted. The application should be made to the Collector of the district. (See rules 91-100, Chap. VI, of the Govt. rules under the Tenancy Act). In explanation of the introduction of the words “one or more” into this section, in the Statement of Objects and Reasons of the Bill, para 24, it is said :—

“Under the section as it stands in the Act, all the proprietors or tenure-holders must apply, but there seems to be no reason why an obstructive co-sharer should have power to prevent other co-sharers from obtaining a

survey and record-of-rights, if they wish to do so, and are willing to deposit or give security for the expenses."

The insertion of the words "one or more" in this section may be of advantage to purchasers of fractional shares in estates or tenures. Under the section, as it formerly was worded, they were often unable to derive any benefit from their purchases in consequence of the provisions of sec. 188 of this Act, which require all joint landlords to act collectively or by a common agent.

The Board of Revenue in their Cir. No. 2 of October 1899, have directed that no action on applications under this section is to be taken unless and until the necessary deposits have been made for carrying on the work in connection therewith.

It has been held by the High Court that proceedings under sec. 103 of the former Chap. X of the Act are suits, and that, therefore, the provisions of the Code of Civil Procedure apply to them (*Achha Mian v. Durga Charan Jaha*, 25 Calc. 146 : 2 C. W. N., 137). Sections 104—108 of the Bengal Tenancy Act (before the amendment of 1898) apply to proceedings taken under section 103 in the same way as to proceedings taken under section 101.

On an application under section 103, a Revenue Officer is competent to make a survey and prepare a record-of rights without any order of the Government under section 101 (*Dharani Kant Lahiri v. Gaber Ali Khan*, 30 Calc., 339 : 7 C. W. N., 33).

The particulars specified in section 102, when recorded and compiled under s. 103, amount to a "Record-of-rights," and proceedings taken by a Revenue Officer after making a record of the particulars under s. 103 including those under s. 105, are therefore not void for want of jurisdiction. In this case it was observed by Pargiter, J., that the difference between s. 103 of the old Chapter and the present section is that under the former the Revenue Officer was to record the particulars specified in s. 102. The present section gives an applicant the right to select what particulars he may wish to have recorded. If the applicant asks that all or almost all the particulars mentioned in s. 102 be recorded, the record would constitute a "record-of-rights," but if only the particulars mentioned in clauses (a) and (c) of s. 102 be recorded, they not involving any rights, the record could hardly be called a "record-of-rights" (*Sudhendu Narain Acharjee v. Govindu Nath Sarkar*, 32 Calc., 518 : 9 C. W. N., 504 : 1 C. L. J., 239). See also *Scodhyan Pande v. Beni Pershad Koeri*, 9 C. L. J., 67n).

103A. (1) When a [draft] record-of-rights has been [prepared], the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, [or to any omission therefrom], during the period of publication.

Preliminary publication, amendment and final publication of record-of-rights.

(2) [When such objections have been considered and disposed of according to such rules as the Local Government may prescribe, and (if a settlement of land revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 104 F, sub-section (3)], the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) [Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.]

This section has been extended to the Chota Nagpur division, except the district of Manbhum (Not., Feb. 9th 1903), but the words in sub-section (2) "and (if a settlement of land revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 104 F, sub-section (3)" have been omitted.

The provisions of this section are founded on those of section 105 of Act VIII of 1885. The words in brackets have been added by the Amending Act of 1898.

An order striking off a petition of objection under sec. 103 A for default is not a judicial order, nor does it operate as *res judicata* (*Nasarulla Miah v. Amiruddi*, 3 C. L. J., 133).

If there is no settlement of rent under Chap. X, the entry in the record-of-rights, if it was duly published, would be only *prima facie*

evidence in favour of the landlord—which may be rebutted by the tenant (*Ashutosh Nath Rai v. Ishan Chandra Dey*, 9 C. W. N., cclxxix). The presumption in favour of the accuracy of an undisputed entry as to the rate of rent is sufficiently rebutted by the decree in a contested rent suit *inter parties* showing a different rate (*Ghaneshyam Misser v. Padmanand Singh*, 32 Calc., 336 : (1) 1 C. L. J., 134 ; 9 C. W. N., 610) and when in a certain *khewat* it is stated that certain persons are joint holders of a tenure this is rebutted when it is shown that for 60 years the tenants had separately held possession of their separate plots on payment of separate rents (*Raj Narain Mitra v. Anant Tarai*, 10 C. W. N., 908).

When there has been no settlement of rent and no final publication of the record-of-rights, an order under section 103A disallowing an objection under section 103 A is not a final order or an order having a judicial effect. A suit brought to obtain a declaration that certain entries in such record are incorrect is not, therefore, barred either under art. 14, Sch. II of the Limitation Act, or section 104 H, read with section 111 of this Act (*Mahabir Prasad Sahu v. Kewal Kissen Singh*, 2 C. W. N., 22n ; *Ram Ghulam Singh v. Bishnu Pragash Singh*, 11 C. W. N., 48.)

When a Revenue Officer disposes of an objection summarily without adopting the procedure laid down in the Code of Civil Procedure for the trial of suits, his order will not be open to appeal or second appeal, nor will it have the effect of *res-judicata* (*Kurban Ali v. Jaffar Ali*, 28 Calc., 471 : 5 C. W. N., 798). Though a survey *khatian* may not be evidence under section 103 B, it may be evidence of the conduct of the parties at the time of the survey and so admissible (*Kalitara Chaudhrain v. Hara Kishor Rai*, 1 C. L. J., 8 n). But under section 103 B, as amended by Act I, C., of 1907, every entry in a finally published record-of-rights is evidence of the matter referred to in such entry.

The rules prescribed by Government for the preliminary and final publication under this section of the record-of-rights are to be found in rules 62 and 79 of the revised Chap. VI of the Government rules under the Act. Objections made under this section are to be disposed of in accordance with rule 63.

Court Fees.—In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), the Governor-General in Council is pleased to remit the fees chargeable under the said Act on certified copies of entries in a record-of-rights furnished, in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such record-of-rights under section 103 A (2) of that Act (*vide* India Government Not., No. 4634

(1) This decision reviews the previous decision in the same case reported at 6 C. W. N., 914.

Exc., dated Simla the 18th August 1905)—Rev. Cir. Nov., 1905. For the rules referred to, see rule 43, Chapter VI of the Government rules in Appendix I.

103 B. [A certificate, signed by the Revenue Officer, stating that a record-of-rights has been finally published under this Chapter shall be conclusive evidence of such publication and] every entry in a record-of-rights [so published] shall be presumed to be correct until the contrary is proved.

Presumption as to correctness of record-of-rights.

Extended to the Chota Nagpur Division except the district of Manbhum (Not., Feb. 9th, 1903). The present law in this division is Act VI B. C. of 1908, parts of which have been extended to Pargunas Barabhum and Patkum in the district of Manbhum.

This is founded on sec. 109, sub-sec. (2), of Chap. X, as originally framed. The words in brackets have been introduced by the Amending Act of 1898.

The presumption is applicable to a suit instituted before the publication of the record-of-rights in which the entry is contained (*Macdonald v. Babu Lal Purbi*, 4 C. L. J., 519).

When the record-of-rights does not show that there has been a settlement of rent under Chapter X of the Bengal Tenancy Act, the entry of the rent payable in the record is only *prima facie* evidence in favour of the landlord and is liable to be rebutted. But where a rent has been settled and duly entered in the record, such entry of the rent will have the force of a decree (*Abdur Rashid v. Jogesh Chandra Rai*, 10 C. W. N., cxxviii : 3 C. L. J., 949).

New Section 103B.—The following section has been substituted for the above section in Bengal by section 22, Act I, B. C., of 1907 and in Eastern Bengal and Assam by sec. 21 of Act I, E. B. C., of 1908.

EASTERN BENGAL & ASSAM.

<p>[103B. (1) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof</p>	<p>[103B. (1) When a record-of-rights has been finally published under section 103A, the Revenue-officer shall, within such time as the</p>
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Presumption as to final publication and correctness of record-of-rights.

Certificate of and presumption as to final publication, and presumption as to correctness of record-of-rights.

or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied; and a certificate signed by the Revenue-officer, or by the Collector of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates, is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area, and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published

Board of Revenue, may, by general or special order, prescribe, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.

(2) The certificate of final publication, or in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate, tenure or part thereof to which the record-of-rights relates, is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3) The Local Government may, by notification, declare, with regard to any specified area that a record-of-rights has been finally published for every village included in such

shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect].

area and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect.]

Section 103 B has been subdivided into 5 clauses instead of three as in the Bengal act. The only material change, however, is that made by clause (1) directing the Revenue officer to frame the certificate of final publication.

The reason for the change is thus set out by the Select Committee :—

“ In proceedings under section 104A,

section 105 and section 106, limitation runs from the date of the certificate of final publication.

We have therefore made express provision that the Revenue officer shall frame such a certificate.

The date of the certificate and the date of final publication are not necessarily the same and as the date of final publication, is of importance we have provided that the date as well as the fact of final publication shall be specified in the certificate and that the Revenue officer's certificate or a certificate signed by the Collector shall be conclusive proof of both."

In the Notes on Clauses of the Bill of 1906, it is said with reference to this new section 103B :

"This clause modifies the present section 103B, with the object of defining more clearly the weight to be attached to the entries in a finally published record-of-rights and to facilitate the proof of final publication. At present, difficulties are sometimes raised in the Appellate Courts owing to the certificate of final publication not having been produced in the Original Court, because the due publication of the record was not disputed there. There may also be difficulty in furnishing the necessary certificate, if it is called for, after the settlement operations have been concluded and the Revenue Officer has left the district. It is therefore proposed that the record-of-rights shall be presumed to have been finally published, unless this is expressly denied, and that a certificate signed by the Revenue Officer or by the Collector of the district, stating that the record-of-rights has been finally published, shall be conclusive evidence of such publication. It is also proposed to make the provisions of the section applicable to all suits and proceedings in which the record-of-rights may be produced.

Sub-section (2) of the proposed new section 103B, will obviate the necessity of producing a certificate regarding the final publication in every case in which there is a dispute."

Effect of the entry.—The only effect of an entry in the record-of-rights is to raise a rebuttable presumption in favour of the party benefited. It did not create any title and therefore a suit within 2 years of the dispossession and 6 years of the date of the entry was held to be in time (*Ram Sahawan Misser v. Bachoo Misser*, 11 C. W. N., 300). There is no limitation as to the nature of the suit in which the presumption will arise and may operate even in a suit to declare the

entries incorrect (where such suit lies) (*Tokhi Sahu v. Toshi Munda*, 13 C. W. N., 111 : 9 C. L. J., 83).

It is a presumption that the entries were correct at the time of the preparation of the record : a decree was therefore given on a *kabulyat* previously executed by the tenant, shewing a higher rate than that entered (*Luchmi Pershad v. Ekdeswar Sing*, 13 C. W. N., 181).

Evidence of facts both documentary and oral of a date prior to that of the publication of the record is admissible and should be weighed in determining whether the presumption has been rebutted (*Sheonandan v. Bucha Rant*, 9 C. L. J., 284).

When there is a conflict between a previous decree and a subsequent entry in the record-of-rights both are to be considered together and weighed against each other (*Kali Roy v. Protap Narain*, 5 C. L. J., 92).

Onus.—When land is entered as *brahmotter* in the survey *khatian*, the onus is on the landlord to prove that it is his *mal* land (*Chunder Dutt Jha v. Raghu Nath*, 12 C. W. N., cxlviii).

Section 130B does not operate to modify the effect of sec. 104F : when therefore a settlement of rent has been made under part II of Chap. X no evidence is admissible to prove a different rate (*Ambica Charan Chakrabarty v. Joy Chundra Ghosh*, 13 C. W. N., 210).

Suit.—No suit lies for the alteration or correction of entries made in the record-of-rights : persons aggrieved should have recourse to the special remedy provided by this chapter (*Jogendro Nath Ray v. Krishna Promoda Dass*, 35 Cal., 1013 : 2 C. W. N., 1032 : 8 C. L. J., 322). This may be so after the amendment of 1907 : there is a strong body of cases, however, that would support a contrary view. As regards suits for correction or alteration of entries made before 1907, see *Sheonandan Persad Sukul v. Bucha Rant*, (9 C. L. J., 284) ; *Luchmi Pershad v. Ekdeswar Singh*, (13 C. W. N., 181) ; *Tokhi Sahu v. Tosi Munda*, (13 C. W. N., 111) ; *Ramgulum Singh v. Bishnu Pargash*, (11 C. W. N., 48) ; *Shambhu Chandra Hazra v. Purna Chandra Pal*, (35 Calc., 176) ; *Troylakhya Nath Bose v. Macleod*, (28 Calc., 28) and *Mohunt Padmalay Ramanuja v. Lukmi Ram*, (12 C. W. N., 8).

Part II,---Settlement of Rents, preparation of Settlement Rent Roll and [disposal of objections] in cases where a settlement of land revenue is being or is about to be made.

The words in heavy brackets in the heading of this part have been substituted in Bengal for "decision of disputes" by sec. 23, Act I, B. C., 1907.

Present procedure for settlement of rents in Government and temporarily settled estates.—The procedure now to be followed under Part II of this Chapter and the reasons for modifying the former provisions of the Act are explained in the Statement of Objects and Reasons for the Bill to amend the Tenancy Act (paras 12 and 13) as follows :—

“ An important change is proposed in procedure, namely, to transfer the control and supervision of Revenue Officers, when preparing the record-of-rights and fixing the amount of the rents, to the Revenue authorities in the first instance. This is subject, however, to the proviso that entries relating to possession, status, title, etc., in the record-of-rights may be called in question in the Civil Courts, as they are to have only presumptive correctness, and that entries of rent settled, in the Settlement Rent Roll, may be also called in question in the Courts on certain specified grounds noted. If the Civil Court finds that any such entry is incorrect, it shall itself specify what correction is to be made, and shall not refer the matter back to the Revenue Officer. The Bill, therefore, enlarges, rather than curtails, the powers of the Civil Courts. Questions of status, title, etc., which under the Act were intended to be finally decided by the Revenue Officer, subject to appeal to the Special Judge, are now to be explicitly left for final decision to the Civil Courts. As to questions of rent settled, there was under the Act an appeal from the Revenue Officer to the Special Judge, but no appeal from the Special Judge to the High Court. The Bill transfers the right of appeal on these questions, in the first instance, from the Revenue Officer to the confirming Revenue authorities, but even as regards rents settled does not altogether exclude resort to the Civil Courts, for it gives them jurisdiction, which they had not under the Act, in a large class of cases.

“ On the question of settling rents the Select Committee reporting on the Tenancy Bill, as passed, said—

‘ The questions whether a rent is open to settlement, and, if so, the amount at which it should be settled, are of a complex nature depending on two very different sets of considerations. They depend, in the first place, on issues relating to such matters as the existence of the tenancy, the extent of the land, the status of the tenant, the conditions under which he holds, etc., and possibly involving points of law which could not satisfactorily be decided without the security afforded by an ultimate appeal to the highest judicial authority. They depend, in the second place, on considerations of an economical nature, such as the state of prices prevailing at different periods, the effect of improvements, and so forth, which it is universally admitted cannot be adequately dealt with, either in the first instance or on appeal except after local enquiry and by persons possessed of special technical knowledge. The problem before us has been how best to provide for the separation of these two elements, so that each may be dealt with, and finally dealt with, by those most competent to deal with it.

“If for the reasons given above it is desirable to withdraw the judicial procedure and appeal to the Special Judge, so far as proceedings before the Revenue Officers for the decision of disputes are concerned, it is manifestly more so in the matter of settling rents, which as the Select Committee remarked, it is universally admitted cannot be adequately dealt with either in the first instance or on appeal except after local enquiry by persons possessed of special technical knowledge.’ The Revenue authorities are the best judges of economic fact, as the Select Committee held, and all that is now proposed is to restore to them their proper jurisdiction, while reserving all questions of right and title for the Courts. Provision is at the same time made for giving to the settlements of rents and decisions of disputes hitherto made by Revenue Officers under the law as it stands, that finality which subject to appeal to the Special Judge, it was intended by the framers of the Act that they should have.

The Hon’ble Mr. Finucane in introducing into Council the Bill to amend the Bengal Tenancy Act made the following observations on the subject :

“The principal changes in procedure proposed in Chapter X of the Tenancy Act are these two—(1) Under the Act Revenue officers were intended and empowered to decide all disputes that came before them at any time up to the final publication of the records, in the same way, and following with slight modifications the same procedure, as the Civil Courts, whether such disputes related to possession, right, title, status or any other question that might arise from an entry made or proposed to be made in or an omission from, the record. Their decisions were to have the force and effect of decrees of the Civil Courts, and were to be subject to appeal only to a Special Judge appointed by Government for the purpose, and from him to the High Court ; but it was not intended that the correctness of their orders on any dispute so decided should be liable to be questioned in the ordinary Munsiffs Courts. Now, it is proposed that revenue officers shall not finally *decide* any questions of the kind, nor are their orders to have the force and effect of decrees of the Civil Courts. When a dispute is raised on any of the classes of questions just mentioned, Revenue officers will endeavour to ascertain to the best of their ability the true state of things, and after hearing what the parties concerned have to say, ⁽¹⁾ they will pass a summary order directing that entry to be made in the record which appears to them to be the proper one. These entries will be presumed to be correct, but any one who is dissatisfied with them can contest their correctness in the ordinary Civil Courts having jurisdiction to entertain a suit for recovery of rent of the land which forms the subject-matter of the dispute.

“I will explain later on why this change is proposed. Here I merely note the fact.

“(2) The second great change proposed in the procedure prescribed in Chapter X is in the method and agency for the determination of fair rents.

(1) This now applies only to “objections” under sec. 103 A.

Under the present law, Revenue Officers are bound to settle rents, as in the case of decision of disputes, on the same principles, in the same way, and following the same procedure as the Civil Courts ; their final orders or decisions fixing fair rents are appealable to the Special Judge, but no second appeal, as regards the question whether the rent is pitched too high or too low, lies to the High Court against an order of a Revenue Officer fixing a fair rent.

“Under the Bill it is proposed that the orders of Revenue Officers fixing fair rents shall not be appealable to the Special Judge, but to the superior Revenue authorities and that the finding of the Revenue authorities as to what the amount of the fair rent is, shall be final, except in certain specified classes of cases, in which it is left open to the parties to contest in the Civil Court the orders of the Revenue authorities even as to the amount of a fair rent settled, but only on certain specified grounds.

“If I have succeeded in making these two points clear, it will be manifest in the first place that the Bill not only does not curtail the powers of the ordinary Civil Courts, but, on the contrary, that it actually enlarges the powers of these Courts, that it transfers to them from the Revenue Officers the decision of all disputes involving questions of possession, status, right, and title, and allows an appeal to the High Court on every point on which an appeal now lies to that Court, and that all it does is to alter the procedure for settlement of rent and to transfer the right of appeal on questions of fixing rents from the Special Judge to the Revenue authorities. It is true it allows no resort to the ordinary Munsiffs' Courts or to the High Court as to the amount of a rent settled, except on certain specified grounds, but neither does the present law.

“I now proceed to state reasons why the first of the changes mentioned above, namely, the transference of the decision of disputes to the Civil Courts, is proposed. The framers of the Act of 1885 thought that on a Revenue officer beginning a record-of-rights, he would find himself face to face with numerous cases in which, on the one side or the other, the status of the raiyat, the area of the holding, the amount of the rent payable, were the subject of dispute. Unless he could deal with these disputes, the record would, they thought, be of little value, and it was in their opinion, obviously absurd to empower one officer to settle the question of status and area, and then to send another to settle the question of rent. It appeared to them equally unreasonable to empower a Revenue officer, with all the parties and witnesses before him, to decide disputes and then to allow the whole matter to be re-opened from the very beginning in a Civil Court.

“The natural result of such a course must, it was supposed, be to leave behind the Revenue officer a crop of litigation for the Civil Courts to deal with after the Revenue officer had left. Hence the Select Committee on the Tenancy Bill empowered the Revenue officers to decide all disputes that might arise out of their own proceedings, instead of leaving them over for the decision of the Civil Courts.

"It will be asked, why it is now proposed to depart from the conclusion then come to in this respect? The answer is—*firstly*, that the officers themselves have, in recent years, declared that the burden of deciding questions of possession, status, right and title, following the procedure of the Civil Procedure Code, is too heavy for them, and have begged to be relieved of it: and *secondly*, that the High Court have declared that the class of officers employed on survey and settlement proceedings are unfit for the work of deciding questions of status, right and title.

"In one of their judgments ⁽¹⁾ the Hon'ble Judges of the High Court expressed the opinion that the Legislature could not have intended to transfer civil suits as to rights in land between tenant and tenant to the Revenue Officer, and in another ⁽²⁾ they declared that they did not think that the Legislature contemplated the formidable result that officers, such as those entrusted with the duty of preparing records-of-rights, should be permitted to enquire into disputes as to the titles to land of indefinite extent.

"It will be shown presently that the intention of the Legislature in reality was that Revenue officers should enquire into and decide all disputes coming before them. But however that may be, the proposals now made in this respect are in accordance with the views of the Hon'ble Judges as enunciated in the decisions to which I have referred, and as they are also in accordance with the wishes of the Revenue officers concerned, it is hoped that they will meet with general approval.

"The sole objection to this part of the Government proposals is in this that, as the authors of the Tenancy Act feared, the Revenue officers will leave after them disputes which they have raised but not finally settled, and as these disputes will, if the parties wish to have them decided at all, have to be decided by the Civil Courts, the suitors, especially those of the poorer classes, may find the cost of litigation in the Civil Courts much higher and the results not more satisfactory than the decision of the Revenue officers have been. This is no doubt a serious risk; but the difficulties put in the way of Revenue officers by the decisions of the superior Civil Courts are so great that some change in the law is considered clearly necessary, and no more satisfactory solution of the problem has in the opinion of Government been suggested than that now proposed in the Bill.

"For these reasons then it is proposed that Revenue Officers shall be relieved altogether of the duty of deciding disputes. They will in preparing records-of-rights confine themselves to ascertaining and recording, to the best of their ability, existing facts of possession and status. Presumptive evidential value of correctness will be given to the entries made by them in their records, and it will be open to the parties concerned to question the correctness of these entries in the Civil Courts.

"I now come to the reasons for the second important change proposed, namely, that in the procedure, method and agency for settling rents. The

(1) *Pandit Sirdar v. Manjan*, 21 Cal., 378.

(2) *Bidhu Mukhi Dobi v. Bhagwan Chandra Rai*, 19 Cal., 643.

method of settling rents prescribed in the Tenancy Act is briefly this—the existing rents are presumed to be fair, and any one who wants to alter them has to show, by legal evidence, the grounds of the proposed alteration. The present Act provides that in all proceedings of settlement of rents under Chapter X the Revenue Officer shall, subject to rules made by the Local Government, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and their orders fixing fair rents are appealable to the Special Judge. This implies that each individual case must, (subject to joinder of tenants holding under the same landlord in the same village), be dealt with separately, a separate record being separately recorded in each individual case. Now, when settlements of revenue are being made on a large scale, as they are in Orissa and Chittagong, and rents have consequently to be settled for all the tenants of an entire Division containing hundreds of thousands of holdings, it must be manifestly impossible to treat the settlement of rent in the case of each individual tenant judicially and as a separate civil suit, if the proceedings are to be completed within a reasonable limit of time and at a reasonable expenditure of money. Moreover, it is not necessary for the ends of justice to treat each individual tenant's case separately. When, for example, a rise or fall in the prices since the rents were last fixed has been established to the satisfaction of the Court or the Revenue Officer, and an alteration in the rents generally is sought on the ground of rise or fall in prices since the rents were last fixed, it would obviously involve great waste of time and money to record the evidence on the point of alteration in prices over and over in each separate case. The same remark applies to a prevailing rate. If a prevailing rate is once established for a village or local area, it should not be necessary to record all the evidence in support of it over and over again in each individual tenant's case. But it is necessary to do this if the judicial procedure is to be followed in the settlement of rents. To meet these and other difficulties, it is now proposed to dispense with the judicial procedure altogether in the settlement of fair rents by Revenue officers, and to substitute more elastic methods of settling rents under the supervision and control of the Superior Revenue authorities whose findings will be liable to be contested in the Civil Courts on certain specified grounds and on those grounds only.

“Nobody who has not travelled through Bengal, Bihar and Orissa, and studied on the ground the existing land-tenures, can fully comprehend the immense variety and complication of rent systems that prevail in these Provinces.

“In Chittagong, on the one side, small plots of permanently-settled and temporarily-settled lands measuring a half an acre or less—plots of what are known as long-term and short-term *taluks*, *itmums*, *dar-itmums*, and various other tenures of the kind, not to speak of plots embraced in ordinary occupancy and non-occupancy raiyats' holdings—are all interspersed like squares on a chessboard in the same village. The same person is often proprietor, and

having created a tenure under himself in favour of another person, then becomes an occupancy-tenant under the tenure-holder of his own creation in land of which he is also proprietor.

"In Buckerganj there are no less than 13 different grades of intermediate tenure-holders between the proprietor and the actual cultivator, and the same person often holds shares as proprietor and again as tenure-holder under another tenure-holder and as occupancy-raiyat under yet another, all in the same plot of land. To give a concrete example. In a particular estate in that district one Kamiruddin has a small plot of land. He holds a fractional share, represented by $\frac{702}{122 \times 4}$ of that plot as an occupancy-raiyat under a *howladar*, a share, represented by $\frac{117}{307 \frac{1}{2}}$, under another *howladar* as tenant at fixed rates, $\frac{10}{307 \frac{1}{2}}$ as occupancy-raiyat under the same *howladar*, and $\frac{1}{122 \frac{1}{2} \times 4}$ as under-raiyat.

"Again, in Chota Nagpur, in another direction, rent is assessed not by an acreage rate, but by guesswork according to the number of ploughs the tenant may have or the quantity of seed sown by him. In Bihar, in another direction the system of tenures is comparatively simple and is analogous to that prevailing in the neighbouring districts of the North-Western Provinces; but even there proprietary interests are extremely complicated, and a proprietor has been known to hold the one-millionth part of an estate, the Government revenue of the whole estate being one anna.

"How is it possible for a Judicial Officer sitting in a Court with no experience of these things to understand these complications of tenures or to fairly assess the rents that they ought to pay?

"But even if an officer sitting in Court could understand the intricacies of tenures, still the assessment of fair rents on a large scale under the procrustean rules of judicial procedure would be extremely difficult.

"As Sir John Shore wrote more than 100 years ago: 'The infinite varieties of soil and further variations of value from local circumstances are absolutely beyond the investigation and almost the comprehension not merely of a Collector, but of anybody who has not made it the business of his life.'

"Sir Charles Elliott wrote 80 years later, when he was Settlement Officer in the Central Provinces: 'The art of fixing rent is an almost lost one. If you ask any *zamindar* why such a field pays such a rent, the most intelligent of them can give you no answer but that his fathers fixed it so.'

"Now, such being the complications of tenures and such being the difficulties in the way of settling rents, on a great scale, it is considered by Government that the best agency for overcoming these difficulties is that of Revenue Officers, who can go on the ground, see the land for themselves, observe and ascertain the facts on the land, and consult the people concerned in their villages. It is thought that the hard-and-fast rules of the Law of Evidence and of the Civil Procedure Code are not suited to proceedings of this kind. It follows that it is not desirable to tie Revenue Officers down by the Civil Procedure Code or prescribe any one method of settling rents, and to insist that Revenue Officers shall follow that method only.

“A good Settlement Officer who is tactful and sympathetic will make a good settlement without any law. He will consult the people concerned, be guided largely by what they think, and generally carry them with him. He will recognise the facts that the people who have lived on the land all their lives know very much more than he can of its capabilities, that the present rent is the result of the past history of the holding and of the haggling of all the ages, and he will not, if he is wise, ignore that history or attempt to raise or lower all rents to one dead level according to his own preconceived notions of the fitness of things. The landlords and raiyats are generally reasonable when brought together in their villages, surrounded by their neighbours and restrained by the public opinion of their fellows. Hence, it is deemed to be a matter of cardinal importance that officers settling rents should be free to consult the people in their villages, to note what they say, and themselves to observe facts on the spot and make use of the knowledge thus acquired in coming to a conclusion as to what a fair rent would be. But this the Law of Evidence and the Civil Procedure Code do not allow them to do.

“Again, an inexperienced Revenue Officer may, under the present law, do great mischief either by excessive enhancements or reductions of rent. The superior Revenue authorities have no real control over him under the law as it stands, and his decisions, however manifestly wrong, can only be reversed by a regular appeal to the Special Judge, which appeal can only be made within 30 days of the passing of his order, and when made may take a very long time to decide. Moreover, as I have already indicated, if each and every landlord and tenant in a vast estate or local area under settlement of rents were to contest the Revenue Officer's orders or proposals for settling fair rents, and to fight out every case as a civil suit, as they are entitled to do under the present law, it is clear that the proceedings would be interminable, and the expense intolerable. Happily the raiyats and landlords have not fought out every case. They have generally accepted reasonable proposals; but, admitting this to be the rule, there have been exceptions where the tenants kept aloof and rents were settled behind their backs, which were manifestly unfair. These rents were not appealed against to the Special Judge within the period of limitation. They became binding on the parties, and the Revenue authorities had no legal power to alter them. The law ought not to be based on the assumption that recourse to it will not be generally needed, and that people will always be moderate and reasonable.

“For all these reasons it is proposed to transfer the control of Revenue Officers in settling rents to the Revenue authorities, who are not to be tied down by the rules of judicial procedure, and it is also proposed to make the method of settling rents more elastic than it now is.”⁽¹⁾ (Proceedings of the Bengal Council, 3rd April, 1897, pp. 147-156).

(1) This was the original plan, but it was subsequently modified.

Settlement of rents, and preparation of Settlement Rent Roll, when to be undertaken by Revenue Officer.

104. In every case in which a settlement of land-revenue is being or is about to be made, the Revenue Officer shall, after publication of the draft of the record-of-rights under section 103 A, sub-section (1),—

- (a) settle fair and equitable rents for tenants of every class,
- (b) notwithstanding anything contained in section 192, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of [clause (j)] of section 102, that the occupant is not entitled to hold it without payment of rent, and
- (c) prepare a Settlement Rent Roll.

[Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the Local Government to be expedient that he should do so.]

The words in heavy brackets have been inserted in this section as a consequential amendment to the amendment made by Act I, B. C., of 1907 in sec. 102 and the proviso has been added by sec. 24, Act I, B. C., of 1907, and sec. 23 of Act I, E. B. C., of 1908 for Eastern Bengal.

Modifications made by this section.—This section is founded on a portion of section 104 of the former Chapter X, which ran as follows :—

“In any case under section 101, sub-section (2), clause (d), (1) the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall

(1) i.e., when a settlement of revenue is being or is to be made.

have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be."

The extent of the modifications made by this section will be seen on comparing the provisions of the two sections. It is to be noted that the last clause of the former section 104, cited above, has not been reproduced in the present section. In settling rents under this section, then, the Revenue officer is no longer bound to presume the existing rent to be fair and equitable, nor is he under any of the restrictions imposed by this Act on the enhancement or reduction of rent, except as provided in section 104A (1) (d). Under the proviso to sec. 104C, however, he is not bound to apply the rates specified in a Table of Rates in any particular case in which he may consider it unfair and inequitable to do so, and according to the last clause of sec. 104D he shall, in settling rents in accordance with the Table of Rates, "so far as may be, have regard to the *general principles* of this Act regulating the enhancement or reduction of rents."

Section 192 referred to in clause (b) of the section gives power to a Revenue officer when land revenue is being for the first time assessed on, or a fresh settlement of land revenue is being made of, a temporarily settled area, on the application of either the landlord or the tenant (or, in areas in which Act I, B. C., of 1907 is in force, of his own motion), to set aside leases to hold land rent-free or at a particular rent and to assess rent upon the land, but requires him to fix a fair and equitable rent in accordance with the provisions of this Act.

Duty of Revenue Officer :—The Revenue Officer is bound under this section to settle fair and equitable rents for all classes of tenants. It would, therefore, seem to be his duty to settle the rents of under-*rai*yats as well as the rents of other classes of tenants. Where some sort of a tenancy is admitted, the settlement officer has jurisdiction to settle rent under sec. 104.

Effect of Settlement of Rent.—A settlement of rent under sec. 104 (2) for the purposes of land revenue has under sec. 107 the force of a final decree of a Civil Court and as such operates as *res judicata* upon the question of rent payable by the tenant both as to its nature and amount (*Brohmanand Mahapatra v. Arjun Raut*, 1 C. L., J., 310 ; *Durga Charan Laha v. Hatim Mandal*, 29 Calc., 252 : 6 C. W. N., 238). These rulings refer to Chapter X as it stood before the Amendment Act of 1898. Under the present Chapter X, section 107 does not apply to rents settled under part II. Section 104 J, deals with the finality of such rents.

Proviso.—It has been held that *Explanation 1* to section 101 (2) (d), read with section 104 (a), renders it necessary to settle fair and equitable rents for tenants of every class, whenever a survey and record-of-rights is made in respect of a Government estate or tenure. This course is ordinarily adopted, but it is sometimes found inconvenient. By the proviso it is accordingly enacted that in Bengal it shall not be necessary to settle the rents of tenants of every class in a Government estate or tenure, when it does not appear to the Government to be expedient to do so.

104A. (1) For the purposes of settling rents under this part and preparing a Settlement Rent Roll, the Revenue Officer may proceed in any one or more of the following ways, or partly in one of those ways and partly in another, that is to say,—

Procedure for settlement of rents and preparation of Settlement Rent Roll under this part.

- (a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue Officer shall satisfy himself that the rent so agreed upon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent ;
- (b) the Revenue Officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent ;

- (c) if the circumstances are, in the opinion of the Revenue Officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenureholders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described :
- (d) the Revenue Officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (1), or by enhancing or reducing such rentals : Provided that in making any such settlement regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive,) 180 and 191.

(2) The Settlement Rent Roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

The provisions of this and of the following sections of Part II of this Chapter were introduced into the Chapter by the Amending Act of 1898.

Objects and Reasons of this section.—The reasons for introducing this section are as follows :—

“ The endless variety of local conditions in a vast Province like Bengal, containing, as it does, in one place or another, every form of land-tenure

known in India, from the primitive system of Chota Nagpur and Angul, analogous to that of the Central Provinces, on one side, to the Bihar system, analogous to that of the North Western Provinces, in another, to the highly complex and intricate system prevailing in Chittagong and Backergunge in a third direction, and to the *raiayatwari* system prevailing in Government estates, analogous to the Madras and Bombay systems, in other directions, is so great, that no one system of settling rents will work well in all parts of the province alike.

“Hence, it is thought desirable to make the method of settling rents more elastic than it is at present, and this has been provided for in the new section 104A inserted in the Bill. That section enables the Revenue Officer to settle rents by compromise, with the assent of the parties, when satisfied that the rents agreed upon are fair and equitable, or to propose rents which, if accepted, may be settled as fair, or to frame a Table of Rates where the conditions are such as to render this practicable, and to apply the rates to areas resulting from survey, or to maintain the existing rents, or to enhance or reduce them on the grounds specified in the Tenancy Act.

“The system of framing Tables of Rates was abandoned when the Tenancy Act was being passed, because it was thought to be generally impracticable: but it was admitted at the time that there were some areas in which it was practicable to frame Tables of Rates. It is believed that this is the case in parts of Orissa, to which province the Tenancy Act was not extended when passed. The provisions of the Bill for framing Tables of Rates follow to a large extent the proposals of the Rent Commission and those of the Bill of 1884.” (Statement of Objects and Reasons appended to the Bill to amend the Tenancy Act, paras, 9, 10 and 11).

Contents of
Table of Rates.

104B. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue Officer necessary or practicable to fix a rate or different rates of rent ; and
- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

(2) When the Revenue Officer has prepared the Table of Rates he shall publish it in the local area, estate, tenure or village to which it relates in the vernacular language prevailing in the district, and in the prescribed manner.

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue Officer within a period of one month after such publication, and the Revenue Officer shall consider any such objection and may alter or amend the Table.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue Officer shall submit his proceedings to the Revenue authority empowered by rule made by the Local Government to confirm the Tables and Rent Rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further enquiry.

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of the class within the area to which the Table applies.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue Officer may settle all or any of the rents and prepare the Settlement Rent Roll on the basis of the rates shown in the Table, by calculating the rental of each tenure or each holding of a raiyat or under-raiyat on the area of such tenure or holding at the said rates :

Provided that the Revenue Officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue Officer shall be guided by such rules as the Local Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith.

The rules regarding the preparation of Tables of Rates and Settlement Rent Rolls are contained in Section VII, Chapter VI of the Government Rules reproduced in Appendix I. Under rule 23, Tables of Rates are not ordinarily to be prepared, when it is found that the tenants hold their lands at lump rentals, and no rates actually exist, or when the rates are so numerous and varied, and are so little dependent on the class of soil, that no table of existing rates can be prepared.

104E. (1) When a Settlement Rent Roll for a local area, estate, tenure, or village or part thereof has been prepared, the Revenue Officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication, and shall dispose of such objections according to such rules as the Local Government may prescribe.

Preliminary publication and amendment of Settlement Rent Roll.

(2) The Revenue Officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent Roll is submitted to the confirming authority under section 104F, revise any rent entered therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104F. (1) When all objections have been disposed of under section 104E, the Revenue Officer shall submit the Settlement Rent Roll to the confirming authority, with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

Final revision of Settlement Rent Roll, and incorporation of the same in the record-of-rights

(2) The confirming authority may sanction the Settlement Rent Roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue Officer shall finally frame the Settlement Rent Roll, and shall incorporate it with the record-of-rights published in draft under section 103A.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue Officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E ; and such appeal shall lie to such superior Revenue authority as the Local Government may by rule prescribe.

Appeal to, and
revision by, su-
perior Revenue
authorities.

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Sub-section (2) of this section has been extended to the Chota Nagpur Division, except the district of Manbhum (Not., Feb. 9th, 1903,) but for the word "Part" read "Chapter" and the words "but not so as to affect any order passed by a Civil Court under section 104H" are omitted.

Board of Revenue's Instructions as to period of revision.

"From certain cases that have recently come before the Board, it appears that misconception exists as to the period during which settlement records are open to revision by the Board under section 104 G (2) of the Bengal Tenancy Act. The Legal Remembrancer has advised (Bd.'s Progs. Coll. 10, file 21 of 1902) that section 104 G (2) must be so construed as to give the Board the power of revision in a case where an application has been made by the party within two years from the date of the certificate of final publication. This view is based on judicial rulings, which have affirmed that parties should not suffer where a procedure to which they are entitled to have recourse in a suit becomes technically barred by limitation through no fault of theirs but an act or omission of the Court. Applications, or recommendations of local officers for revision of a record-of-rights by the Board in exercise of its powers under the section cited should be forwarded without avoidable delay." (Board's Cir. No. 3, Nov., 1906).

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent Roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

Jurisdiction of Civil Courts in matters relating to rent.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then, within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :

- (a) that the land is not liable to the payment of rent ;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;
- (c) that the relation of landlord and tenant does not exist ;
- (d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;
- (e) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;
- (f) that the Revenue Officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under that clause ;

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|---|---|
| <p>(g) that the special conditions and incidents of the tenancy, [or any right of way or other easement attaching to the land which is the subject of the tenancy</p> | <p>(g) that the special conditions and incidents of the tenancy have not been recorded or have been wrongly recorded.</p> |
| <p></p> | <p>(h) That any right-of-way or other ease-</p> |

have not, or has not,
been recorded or have,
or has,] been wrongly
recorded.

ment attaching to the
land has not been re-
corded or, has been
wrongly recorded.

Instead of amending clause (g) of sub-section (3) of sec. 104 this Act frames a new clause (h). There does not seem to be any material difference in the result : "we have thought it convenient that easements should be the subject of a separate clause." Rep. Sel. Com.

The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent ; and in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the

same Settlement Rent Roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(9) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector of the district.

The words in heavy brackets in sub-section (3), clause (g) have been substituted by s. 25, Act I, B. C., 1907, for the words "have not been recorded or have."

Sub-section (2).—The period of limitation laid down in this sub-section only applies to cases in which a Settlement Officer settles or omits to settle rent (*Abhin Das v. Balunki Pal*, 11 C W. N., ccxix).

Sub-section (3).—This sub-section has been framed with reference to High Court rulings under the former Chapter X, in which it was decided that Revenue Officers in settlement proceedings had no jurisdiction to decide finally and conclusively on such questions relating to a tenant's status as are detailed in the provisions of this sub-section. These rulings are referred to in detail in the note to sec. 106. The entries in the record-of-rights concerning such matters and all matters not affecting the determination of the rent, when a settlement of land revenue is being or is about to be made, have now only the presumption of correctness attaching to them. They can be called in question in the Civil Courts, which have now when settling such matters the duty cast upon them of correcting the entries in the record-of-rights (see sub-secs. 4, 5, 6, 7 and 9). In all matters relating to the determination of the tenant's rent and its enhancement or reduction, which are not affected by such questions as are specified in this sub-section, but in these only, the Revenue authorities have absolute and final jurisdiction.

This section has been designed mainly to safeguard the Government revenue and to attach reasonable finality to the fixation of the

rental assets upon which the assessment of revenue is fixed. It does not bar a suit against the recorded tenant for rent due (*Nasirulla Mia v. Amiruddi*, 3 C. L. J., 133).

Sub-section (3) clauses (e) and (g).—Suits by tenants contesting the correctness of a record of rights as to their status and as to their liability to enhancement fall within s. 104 H sub-section (3) clauses (e) and (g) and even if they come under the more general Section 111A which must be read with section 42 of the Specific Relief Act, they would be barred under section 104H sub-section (2) if they were laid after 6 months from the date of the certificate. The general rule of limitation is not applicable.

As the certificate of final publication was not signed by the Revenue Officer in charge of the Cadastral Survey, it was held there was no certificate from the date of which limitation could run (*Pahalwan Sing v. Secretary of State*, 12 C. W. Notes. cvii).

Sub-section (3), clause (g).—The amendment introduced in clause (g) of sub-section (3) is consequential on the amendment introducing the new clause (i) in s. 102 (see p. 313). The Select Committee in their report on the Bill of 1926 said :

“ We think that, for the purposes of section 104H, the record of easements should be on the same footing as the record of special conditions and incidents of the tenancy, and that this is one of the grounds on which a suit should be allowed to be instituted in the Civil Court regarding an entry in a Settlement Rent-roll prepared under Part II of Chapter X.”

Sub-section (8).—Save as provided in this section, no suit shall be brought in a Civil Court for the alteration of any entry of a rent settled under secs. 104A to 104F. But any one dissatisfied with an entry in, or an omission from a record-of-rights prepared under this Part of the Chapter, which concerns a right of which he is in possession, may sue for a declaration of his right under the provisions of the Specific Relief Act (I of 1877). (Sec. III A.)

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F, and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumptions
as to rents settled
under sections 104A to
104G.

Rules.—For the procedure under Part II of this Chapter, see rules 22 to 34 of Chap. VI. of the Government rules under this Act (App. I).

Conclusive.—Section 103B does not operate to modify the effect of sec 104J. When rent has been settled under part II of Chap. X no evidence is admissible to prove that a different rate is payable (*Ambica Charan Chakrabarty v. Joy Chandra Ghosh*, 13 C. W. N., 210).

Part III.—Settlement of Rents and decision of disputes in cases where a settlement of land revenue is not being or is not about to be made.

105. (1) When, [in any case in which a settlement of land-revenue is not being made or is not about to be made], either the landlord or the tenant applies, [within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2)], for a settlement of rent, the Revenue Officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Settlement of rents by Revenue Officer in cases where a settlement of land-revenue is not being or is not about to be made.

[*Explanation.*—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.]

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue Officer has recorded, in pursuance of [clause (j)] of section 102, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within two months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue Officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the Government of India may, from time to time, prescribe by notification in the Gazette of India.

(4) In settling rents under this section, the Revenue officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

[(5) The Revenue Officer may in any case under this section propose to the parties such rents as he considers fair and equitable ; and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue Officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).]

This section and the following sections of Part III apply only to settlements in permanently settled estates and to the preparation of a record-of-rights in temporarily settled estates ordered under section 101 (1) or section 101 (2) (a) (b) or (c) when a settlement of land revenue is not being, or is not about to be made. The words and clauses within light brackets have been added by the Amending Act of 1898.

The words in heavy brackets in sub-section (2) have been inserted by s. 24, Act I, B. C. of 1907, as a consequential amendment made by that Act in s. 102.

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(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.

This section makes an addition to section 105 to provide for a difficulty which landlords might feel as to the starting point of limitation under sub-section 1. The Bengal Act does not provide for this contingency.

Sub-section 1. Omission of provision for settlement of rent of excess land by Revenue Officer of his own motion.—

The corresponding sub-sections of sec. 104 of the Act, as originally framed, on which this section is founded, were as follows :—

“(1) When, in any proceeding under this Chapter, it does not appear that the tenant is holding land in excess of, or less than, that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (b), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.”

The reasons for modifying these sub-sections as above are thus explained in the Objects and Reasons for the Bill (para' 25) :—

“The Revenue Officer will not be bound, as at present, of his own motion, to settle a fair rent, when it appears that the tenant is holding land in excess of or less than that for which he is paying rent. It has been ruled by the High Court that it must so appear on legal evidence, and therefore the provisions of the present law requiring the Revenue Officer to settle rent in private estates of his own motion, when, it appears to him that the tenant is holding more or less land than he is paying rent for, is inoperative, unless application is made and evidence produced.”

The case referred to in this extract is that of *Gauri Patro v. Reily*, (20 Calc., 579). In another case (*Secretary of State v. Kajimudin*, 23 Calc., 257) it was said that a Settlement officer has no power to settle rents *suo motu* under sec. 104 (2) when it does not appear on the face of his proceedings that the lands held by the tenants are in excess of that for which they were paying rent, and when in such circumstances he had settled rents, his proceedings were held to be of an executive and not of a judicial character. But in a later stage of the same case (26 Calc., 617) it was held that, given the circumstance of an increase or a decrease in the area of the land for which a tenant is paying rent, it is competent to the Revenue Officer under sec. 104 (2) to settle a fair and equitable rent in respect of the whole of the land of the tenant, including the excess area, and the Revenue Officer can in such a case enhance the rent under the provisions of the Act, *e. g.*, on the ground of the rise in prices of the food crops, and so forth.

The order of a settlement officer under sec. 105 passed before the amending Act of 1898 is a summary order and does not operate as *res-judicata*. The order in this case being *ultra vires* art 14, schedule II, Limitation Act, did not apply (*Mohant Abhin Das v. Balunk Pal*, 11 C. W. N., Notes. ccxix).

Sub-section (1). Joint landlords.—The provisions of section 188 are apparently applicable to applications for the settlement of rents under this section made by landlords. They must, therefore, apply collectively or by common agent.

Sub-section (1) Explanation.—This explanation is similar to explanation 2 to sec. 101 (2). See the note to that section, p. 310.

Sub-section (2).—While the entry made by a Revenue Officer in the record-of-rights with regard to land claimed to be rent free under sec. 102 (i) is only a summary one, the entry of the rent settled made under this section is a formal and, subject to the provisions of secs. 108 and 109A, a binding one (sec. 107). See note to sec. 103, p. 318. In *Upadhy Thakur v. Persidh Singh* (23 Calc., 723) it has been ruled that proceedings under sec. 104 (2) of the old Chap. X for the settlement of

rents are not suits—and probably, notwithstanding the finality now given to a Revenue Officer's decisions in proceedings under this section (sec 107), they are also, strictly speaking, not to be regarded as suits. They are instituted by an application, and the provisions of the Court Fees Act, 1870, applicable to suits, do not apply to them. Not being suits, the provisions of sec. 373, Civ. Pro. Code are not applicable to them (*Janardan Misra v. Barclay*, 5 C. W. N., cxi).

Sub-section (4).—This sub-section is reproduced unaltered from the old section 104, and makes it clear that under this part of the Chapter the Revenue Officer is bound to adhere strictly to the provisions of this Act relating to the enhancement or reduction of rents. He has not in such settlement the same freedom of action in relation to these provisions as he has in settling rents in Government and temporarily settled estates (sec. 104A). He is bound to presume that the existing rent is fair and equitable until the contrary is proved [sub-section (4) of this section].

This subsection covers cases both of enhancement of rent under sec. 32 and also of additional rent under sec. 52. (*Sheodhayan Pande v. Beni Pershad Koeri*, 9 C. L. J., 67n).

Sub-sections (5) and (6).—These sub-sections correspond to sub-sections (b) and (c) of section 104A. See p. 335.

Appeal.—A Special Judge has jurisdiction to hear appeals from the decision of a Settlement Officer in his district regarding disputes and settlement of rent relating to land outside the district but included in an estate recorded in the Collector's books of the district (*Kali Krishna Pal v. Gopi Mohan Roy*, 9 C. L. J., 574).

Second Appeal.—There is no right of second appeal in a proceeding for settlement of rent under this section (*Naimuddin Sheikh v. Ram Rangini Das*, 13 C. W. N., ccxx), but when the Settlement Officer as well as the Special Judge tried matters coming under secs. 105 and 106 without discriminating them in their judgments, a second appeal lies (*Kali Kishore Pal v. Gopi Mohan Roy*, 9 C. L. J., 574). See also, Judgment of the Full Bench in reference in Appeal No. 118 of 1907, under the Letters Patent (*Kirti Chandra Chatterjee v. Mohesh Dutt Jha*).

Rules.—The rules for the settlement of fair rents on the application of the parties under this section are to be found in rules 36 to 41 of the revised Chap. VI of the Government rules under the Tenancy Act. Rule 39 allows any number of tenants occupying land under the same landlord in the same village to make a joint application for the settlement of rents, or to be joined as defendants in the same proceeding on a similar application by the landlord. This is founded on rule 25 of the old rules under

the former Chapter, which was alluded to in *Upadhyay Thakur v. Persidh Singh* (23 Calc., 723) as being *ultra vires*.

Court-Fees.—In all proceedings for the settlement of rents under Part III, Chapter X, and in all proceedings under section 106 of the Bengal Tenancy Act, the fees on processes issued by the Settlement officer are subject to the Rules framed by the High Court under section 2 of the Court Fees Act (VII of 1870). (Rev. Cir. 2nd March 1904).

Decision of questions arising during the course of settlement of rents under this Part.

[105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise :—

- (a) whether the land is, or is not, liable to the payment of rent ;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;
- (c) whether the relation of landlord and tenant exists ;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy ;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging ;
- (f) whether the special conditions and incidents of the tenancy or any right-of-way or other easement attaching to the land have not, or has not, been recorded or have, or has, been wrongly recorded,

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly :

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.]

This section was introduced by s. 26 of Act I, B. C., 1907, on the recommendation of the Select Committee who in their report, observed as follows :

"In cases where rents are settled under Part II of Chapter X of the Bengal Tenancy Act in Government and temporarily-settled estates, section 104H allows any person aggrieved by an entry of a settled rent to file a suit in the Civil Court, on certain grounds, within six months from the date of the certificate of final publication or from the date of disposal of an appeal under section 104G. There is, however, no corresponding provision in regard to cases in which rents are settled under section 105 in private estates.

The result is that litigation in connection with the settlement of rents under section 105 in private estates is unduly prolonged, especially in cases falling under section 105 (2), where the Revenue-Officer settles a rent for holdings for which no rent has hitherto been paid, but which the occupant is not entitled to hold without payment of rent. It frequently happens that long after such a rent has been settled, and when the landlord proceeds to realize it, the tenant files a suit in the Civil Court to have it declared that he is entitled to hold the land rent-free. The dispute is thus re-opened. The High Court have held that the Settlement-officer, under section 105, has only to settle a fair and equitable rent for the holding; and that if any dispute is raised in proceedings under section 105, as to the liability of the landlords to pay rent, proceedings under section 105 must be stayed, and the parties told to file a suit under section 106. This, however only provides for a small minority of the cases. It usually happens that when the case under section 105 comes up for trial, the time allowed for filing suits under section 106 has expired. Or the tenant may refrain from raising the question in the proceedings under section 105, wait till the landlord attempts to realize the settled rent from him, and then raise the matter in the Civil Court.

We are agreed that it is necessary to take some action which will prevent proceedings from being protracted in this way. It has been suggested that this might be effected by enacting some provision similar to section 104H in Part II of Chapter X of the Act, which allows the entries of rent entered in a Settlement Rent-Roll to be contested in the Civil Courts on certain grounds within six months of the date of the certificate of final publication.

But the majority of us are of opinion that this would only afford a partial remedy, and there is no real analogy between a settlement of rents under Part II and under Part III of Chapter X. In settling rents under Part II in connection with a settlement of land revenue, the Revenue-officer is subject entirely to the control of the Revenue authorities, and appeals against the rent settled lie exclusively to the Revenue authorities. There is therefore good reason for allowing certain matters to be referred to the Civil Courts as under section 104H. But in proceedings under Part III of Chapter X for the settlement of rents in private estates, the Revenue-officer acts judicially. Under section 107, he is required to adopt the procedure for the trial of suits; and under section 109A the appeal against his decision lies to the Special Judge and the High Court.

The majority of us are, therefore, of opinion that there is no reason why finality should not be given to the decisions of Revenue Officers under Part III of Chapter X, subject to appeal to the Special Judge and the High Court. It was the expressly declared intention of the framers of the Amendment Act of 1898 that the proceedings of the Revenue-officers and the Special Judge should be final. The present clause merely gives effect to that intention. The High Court have held that, under the law as it stands, finality attaches only to the rent settled under section 105, and not to incidental matters raised in the course of these rent settlement proceedings. But in order that a fair rent may be settled, it is essential that such matters should be decided. The Revenue-officer would have the power to decide them finally, subject to appeal to the Special Judge, if they were raised in suits under section 106, and the majority of us can see no valid reason why the same Revenue-officer should not be given power to decide them finally, subject to appeal, if they are raised in proceedings under section 105. We consider that any other course would lead to considerable confusion and practical inconvenience, as it would enable the same matters to be raised simultaneously in the subordinate Civil Courts and before the Special Judge and the High Court. For these reasons, the majority of us are in favour of the proposed clause."

The proviso was added in order to prevent the same issues being tried simultaneously in proceedings under section 105 and in suits under section 106. Sub-section (3) of section 111B provides for the stay of proceedings under section 105, when an issue, pending the decision of which a fair rent cannot be settled, has been raised in a suit under section 106.

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106. In proceedings under this Part, a suit may be insti-

Institution of suit before a Revenue-officer.

106. (1) In proceedings under this Part, a suit may be ins-

Institution of suit before a Revenue-officer.

tuted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under subsection (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record, whether such dispute be between landlord and tenant or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter, and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue-officer may, subject

tuted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record-of-rights under subsection (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record, whether such dispute be between landlords and tenant or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter, and the Revenue-officer shall hear and decide the dispute :

Provided that the Revenue-officer may, sub-

to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial.

[Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.]

ject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial.

[Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.]

(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date

of the certificate of final publication of the last record which contains entries relating to such lands."

Instead of adding a new proviso to sec. 106 as done in the Bengal Act, this Act divides sec. 106 into two sub-sections, the original section with the new proviso being sub-section (1) and a new sub-section (2) providing for the contingency of separate records of rights being prepared in respect of different parts of the same tenancy. This seems to be an improvement on the Bengal Act. See *Mohant Padmalav v. Luchmi Rani* (12 C. W. N., 8).

Former section 106.—This section as originally framed in Act VIII of 1885, ran as follows :—

"If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this Chapter), or as to the propriety of any omission which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute."

The following section was substituted for it by Act III, B. C. of 1898 on the 2nd November 1898.

106. If in any case under this Part, a dispute arises at any time within two months from date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), regarding any entry which the Revenue Officer has made in, or any omission made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of the neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent free is properly so held, or as to any other matter,

a suit may be instituted before the Revenue Officer, by presenting a plaint on stamped paper, for the decision of the dispute, and the Revenue Officer shall then hear and decide the dispute :

Decision of disputes by Revenue Officer.

Provided that the Revenue Officer may, subject to such rules as the Local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial.

The present section was substituted by Act I of 1903 on the 19th February, 1903. The object of the section as stated in the Statement of the Objects of the Bill is to indicate clearly the period of limitation for the institution of suits under section 106 of the Bengal Tenancy Act.

Second proviso.—The second proviso within brackets was added to the section by s. 27, Act I., B. C., 1907, and is intended to prevent Revenue officers dealing simultaneously with the same issues in proceedings under ss. 105A and 106.

Amending Act.—In matters of procedure an amending Act would affect legal proceedings instituted prior to the amendment. A case referred under the section as amended by the Act of 1898 for the correction of an entry made in 1896 was held to have been properly tried by the Civil Court (*Rahimuddin v. Jagat Kishore Acharya*, 12 C. W. N., 987).

Distinction between “objections” and “disputes.”—The distinction between “objections” under sec. 105 and “disputes” under sec. 106 of the former Act was pointed out in the cases of *Gopi Nath Masant v. Adoito Naik* (21 C.L. C., 776) ; *Anand Lal Paria v. Shib Chandra Mukhurjee* (22 Calc., 477) ; and *Secretary of State v. Kajimudin* (23 Calc., 257) ; and it was ruled that an “objection” could be made during the pendency of the publication of the draft record-of-rights, but a “dispute” could be raised only after the preparation of the draft record and before its final publication. See *contra*, *Durga Charun Laskar v. Hari Charan Das* (21 Calc., 521). But, in the Full Bench case of *Dengu Kazi v. Nobin Kissori Chaudhurani* (24 Calc., 462 : 1 C. W. N., 294), it was decided that a “dispute” can arise at any time, *i. e.*, both before and after the publication of the draft record, and even before an entry in the record is made, and that the decision of a dispute so arising is a decision under sec. 106 of the former Chapter X of the Act, and therefore, subject to appeal and second appeal. In this case the rulings in *Gopi Nath Masant v. Adoito Naik* and *Anand Lal Paria v. Shib Chandra Mukhurji*, so far as they lay down a contrary rule, were overruled. “Objections” are now clearly distinguished from “disputes.” The former are of two kinds, *viz.*, (1) objections to entries in, or omissions from, the record-of-rights. These may be preferred and are to be disposed of before the final publication of the record (sec. 103A) ; and (2) objections to the settlement rent roll (104E). Such objections can only be preferred when a settlement of revenue is being or about to be made. They, too, must be made and disposed of before the final publication of the record-of-rights. And

a Revenue Officer's decision in them will not be open to appeal or second appeal, nor will it have the effect of *res judicata* (*Kurban Ali v. Jaser Ali*, 28 Calc., 471). "Disputes" can only be raised under this section, *i. e.*, in settlements where no settlement of land revenue is being or is about to be made. They cannot arise until after the final publication of the record.

To what matters disputes may relate.—The provisions of clause 2 of this section have been passed with reference to certain rulings of the High Court under Chapter X of the Act, as it originally stood, in which it was held that a Revenue Officer, in settlement proceedings had no jurisdiction to decide (1) disputes between owners of neighbouring estates as to the title to any land (*Narendra Nath Chaudhri v. Sri Nath Sandel*, 19 Calc., 641); (2) disputes regarding the boundaries between conterminous estates (*Bidhumukhi Devi v. Bhagwan Chandra Rai*, 19 Calc., 643); (3) disputes as to which of two persons claiming to be tenant should be recorded (*Pandit Sardar v. Meajan*, 21 Calc., 378); (4) disputes as to whether land held rent free is properly so held (*Padmanand Singh v. Bajor*, 20 Calc., 577; *Secretary of State v. Netai Singh*, 21 Calc., 38; *Karim Khan v. Brajo Nath Das*, 22 Calc., 244), and (5) a dispute as to a right of way between two neighbouring tenants (*Haro Mohan Rai v. Pran Nath Mitra*, 27 Calc., 364; 4 C. W. N., 127). In *Gokhul Sahu v. Jadu Nandan Rai* (17 Calc., 721), it was ruled that the defendants according to their own case being tenants within the meaning of the Act, the Revenue Officer had jurisdiction to decide whether land held by them was rent-paying or rent free. This was followed in *Jaipal Dhobi v. Palakdhari Das* (2 C. W. N., 491) in which the question at issue was whether certain land was *zerait* land of the landlord or part of the occupancy-holding of the tenant. In *Gokhul Sahu v. Jadu Nandan Rai*, it was doubted whether the Revenue Officer would have had jurisdiction, if the relation of landlord and tenant had not existed between the parties. Now, under the terms of the present section the Revenue Officer has jurisdiction to decide all disputes relating to the matters referred to in para 2 of the section as well as to "any other matter." These words however, would not seem to be intended to include questions relating to rents settled under sec. 105. The Revenue Officer's decision of a dispute arising under this section will have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to revision under sec. 108 and appeal under sec. 109A, shall be final (sec. 107), and not liable to be set aside by a suit in a Civil Court (sec. 109). An order of a Special Judge as to the length of the standard of measurement to be used in measuring certain lands is not a decision in a case under sec. 106 (*Narahari Jana v. Hari Charan Paramanik*, 26 Calc., 556).

Rival proprietors.—In a suit between rival proprietors, the Court is confined to a consideration of the question of possession and cannot enter into the question of title. In a suit between tenant and tenant or between landlord and tenant the court might possibly enter into the question of title as well (*Mahant Padmalav v. Luchmi Rani*, 12 C. W. N., 8 : but see *Jogendra Nath v. Krishna Pranada*, 12 C. W. N., 1032 : 35 Calc., 1013 : there seems to be some conflict between these two decisions).

Cases under this section are suits.—From clause 3 of this section it will be seen that a case under this section is a suit to be instituted by a plaint on “stamped paper,” by which expression is probably meant that it shall be liable to Court fee duty under the provisions of the Court Fees Act (VII of 1870).

In *Petu Ghorai v. Ram Khelawan Lal* (18 Calc., 667), it was ruled that “disputes” under sec. 106 of the former Chap. X were suits. This was doubted in *Upadhyaya Thakur v. Persidh Singh* (23 Calc., 729), and the Legislature has apparently framed the section in such terms as to place the matter beyond all question. See also rule 42 of the revised Chap. VI of the Government rules under the Act (App. 1).

Res Judicata in settlement cases.—A question between landlord and tenant heard and decided by a Revenue Officer under sec. 106 of the former Chap. X, is *res judicata* between the same parties in a subsequent suit (*Gokhul Sahu v. Jadu Nandan Rai*, 17 Calc., 721 ; *Jaipal Dhobi v. Palakdhari Das*, 2 C. W. N., 491). And this rule applies in the case of questions both of the status and of the fair and equitable rent of a tenant (*Durga Charan Laha v. Hatem Mandal*, 6 C. W. N., 238). An order made by a Revenue Officer, determining the rent payable for a holding has the force of a decree, and when not set aside by appeal or otherwise, cannot be questioned in a Civil Court (*Ram Autar Singh v. Sanomun Singh*, 27 Calc., 167). A settlement of rent under sec. 104 (2) for the purposes of land revenue has under sec. 107 the force of a final decree of a Civil Court and as such operates as *res judicata* upon the question of rent payable by the tenant both as to its nature and amount (*Brahmanand Mahapatra v. Arjun Raut*, 1 C. L. J. 310). The defendants were recorded in the *khatian* of a cadastral survey as intermediate tenure-holders. The plaintiff did not avail himself of the remedy prescribed by sec. 106. He subsequently took a settlement from Government and sued to avoid the defendants’ tenures ; *held*, he was bound to recognise intermediate tenure-holders mentioned in the settlement papers (*Raghunath Puri v. Pitambar Gajendra*, 5 C.L.J., 67). But an order of a Settlement Officer disposing of an objection under sec. 105 of the former Chapter X has not the effect of

res judicata, estopping the trial of the same matters in the Civil Court (*Secretary of State v. Kajimudin*, 23 Calc., 257). An order striking off a petition of objection under sec. 103 'A' for default is not a judicial order ; nor does it operate as *res judicata* in a subsequent suit for rent brought by the objector against the recorded tenant (*Nazarulla Mia v. Amiruddi*, 3 C. L. J., 133 ; *Kurban Ali v. Jafar Ali*, 28 Calc., 471). The proceedings referred to in sec. 107 mean contested proceedings in which there is an adjudication on disputed points. The decision of a Revenue Officer in an uncontested proceeding has not the effect of a decree under that section. Section 109 (now 103 B) lays down a rule of evidence. It does not override the rules of *res judicata* (*Padmnand Singh v. Ghanashyam Misra*, 1 C.L.J., 134 : 32 Calc., 336; 9 C.W.N., 610).

In a suit in which the plaintiff had initiated proceedings under sec. 106 against the landlord and certain persons who claimed to be tenants of the land to have their (*i.e.*, the plaintiffs') names recorded as tenants in the settlement proceedings, it was held by the Settlement Officer that they were the tenants. The persons claiming to be rival tenants, appealed to the Special Judge, but the landlord did not appeal. The Special Judge reversed the Settlement Officer's decision ; the plaintiffs then sued in the Civil Court for a declaratory decree of their rights as tenants. It was ruled that the Special Judge's decision did not operate as *res judicata*, as it merely decided the question as between tenant and tenant (*Jaggannath Ramanuji Das v. Chandra Kumar Basu*, 5 C. W. N., 421).

Where there is a total denial of the relation of landlord and tenant by one of the parties, a Revenue Officer has jurisdiction in a proceeding under section 103 of the Bengal Tenancy Act to decide that question, but his decision, although it may have the force of a decree, cannot operate as *res judicata* in a subsequent suit in ejectment and for declaration of title brought in a Civil Court (*Dharani Kant Lahiri v. Gaber Ali Khan*, 7 C. W. N., 33 : 30 Calc., 339.) In the conclusion of the judgment in this case it was said : "There is no provision in the Bengal Tenancy Act which has the effect of making such a decision" (*i.e.*, the decision of Revenue officer) "final for all purposes, irrespectively of the provisions of sec. 13, C. P. C. Sec. 107 does indeed provide that a decision in a proceeding under sec. 106 shall have the force of a decree ; but it does not necessarily follow that it shall in all cases operate as *res judicata*, for an ordinary decree of a Civil Court has not that effect, except on certain conditions which are set forth in sec. 13, C. P. C." In *Gokul Mandar v. Padmanand Singh* (29 Calc., 707 : L. R., 29 I. A., 196), their Lordships of the Privy Council, with reference to a contention raised as to whether a decision in previous proceedings under the Bengal Tenancy Act that the defendant was a tenure-holder was *res judicata* in a suit for

ejectment in the Civil Court, where the first Court had held it was not *res judicata*, but the High Court had not decided the point, observed, without deciding the question, that under s. 13, C. P. C., a decree in a previous suit cannot be pleaded as *res judicata*, unless the Judge by whom it was made, had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself, in which the issue is subsequently raised. An order of a Settlement Officer made under sec. 105, Chap. X before it was amended by the Amending Act of 1898, is a summary order, and has not the force of a decree, and so there can be no *res judicata*. When the order of the Settlement Officer is *ultra vires* because he settled rent which he had no power to do under the old sec. 105, art. 14, Sched. II of the Limitation Act has no application (*Abhin Das v. Balunki Pal*, 11 C. W. N., ccxix.)

Suit in the Civil Court.—No suit lies in the Civil Court for the alteration or correction of entries made in the record-of-rights. Persons aggrieved should have recourse to the special remedy provided in Chap. X, (*Jogendro Nath Roy v. Krishna Pramoda Dasi*, 35 Calc., 1013 : 12 C. W. N., 1032 : but see *Mahant Padmalav v. Lachmi Rani*, 12 C. W. N., 8 ; *Sambhu Chandra v. Purna Chandra*, 35 Calc., 176 ; *Ram Golam v. Bishnu*, 11 C. W. N., 48 ; *Troylokya Nath Bose v. Macleod*, 28 Calc., 28 ; *Tokhi Sahu v. Toshi Munda*, 13 C. W. N., 111 ; *Lachmi Prasad v. Ekdeswar*, 13 C. W. N., 181 ; *Sheo Nandan v. Bachu Raut*, 9 C. L. J., 284).

107. [(1) In all proceedings under section 105, section 105A and section 106] the Revenue Officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits ; and his decision in every such proceeding shall have the force [and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 109A, shall be final].

[(2) A note of all rents settled under section 105 and of all decisions of issues or disputes under section 105A or section 106, and of all rents commuted under section 40 by a Revenue Officer appointed by the

Procedure to
be adopted by
Revenue Officer.

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designation of Settlement Officer or Assistant Settlement Officer, shall be made in the record-of-rights finally published under sub-section (2), of section 103A, and such note shall be considered as part of the record.]

The words in heavy brackets in the beginning of sub-section (1) have been substituted for the words "in all proceedings for the settlement of rents under this Part, and in all proceedings under section 106," by s. 28, Act I, B. C., 1907. The words in light brackets in the end of sub-section (1) have been added by Act III, B. C., of 1898. The words added to the end of sub-section (1) are intended to have the effect of making all rents settled by a Revenue Officer on an application under sec. 105, and any disputes decided by him under sec. 106, *res judicata* and not liable to be set aside by any further suit in a Civil Court (see sec. 109). But see note pp. 360-361. The new sub-section (2) in heavy brackets has been substituted for old sub-section (2) by s. 28, Act I, B. C., of 1907. It provides for the entry, in the record, of rents commuted by a Settlement Officer under section 40.

Government notification regarding local enquiries.—"Under section 392 of Act XIV of 1882, the Civil Procedure Code, and section 107 of the Bengal Tenancy Act, VIII of 1885, the Lieutenant Governor is pleased to make the following rule as to the persons to whom commissions shall be issued by Revenue Officers empowered under Chapter X of the Bengal Tenancy Act.

"Whenever under the provisions of section 107 of the Bengal Tenancy Act, VIII of 1885, and Chapter XXV of the Civil Procedure Code, Act XIV of 1882, a Revenue Officer directs that a local enquiry be held in the course of proceedings for the settlement of rents, the commission shall be issued to such person not below the rank of a Sub-Deputy Collector or Revenue Officer invested with powers under Chapter X of the Bengal Tenancy Act as the officer directing the enquiry shall appoint for this purpose." (Government notification No. 5073 L. R., dated Nov. 28th 1895, published in the *Calcutta Gazette* of December 4th, 1895, Part I. 1146.)

Where a settlement of rent was made under sec. 104 (2) before its amendment by the Act of 1898 the decision of the settlement officer had the force of a decree under sec. 107 of the Act and is evidence in a suit for rent subsequently brought although it may not operate as *res-judicata* (*Mohim Chundra Roy v. Kali Tara*, 11 C. W. N., 1028).

108. Any Revenue Officer specially empowered by the Local Government in this behalf, may, on application or of his own motion,

Revision by
Revenue Officer.

within twelve months from the making of any order or decision under section 105, [section 105A], section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue Officer, but not so as to affect any order passed or decree made under section 109A :

Provided that no such order or decision shall be so revised if an appeal from it is pending under section 109A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

The word and figures "Section 105A" were added by section 29, Act I, B. C., of 1907 as a consequential amendment.

Section 108 does not warrant the Settlement Officer in revising his entries as to *mal* lands in the record-of-rights. The Act gives to tenants ample opportunity for the correction of mistakes under secs. 105 and 106 (*Sambhu Chandra Hazra v. Purna Chandra Pal*, 35 Calc., 176 : 12 C. W. N., 122 : 7 C. L. J., 103).

“[108A. Any Revenue-Officer specially empowered by the Local Government in this behalf, may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 143A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona-fide* mistake :

Correction by
Revenue Officer
of mistakes in
record-of-rights.

Provided that no such correction shall be made if an appeal affecting such entry is pending under section 109A, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.]

This section has been added to the Act by s. 30, Act I, B. C., 1907. The Select Committee in their report on the Bill of 1906 say :

"It has been pointed out to us that, under the law as it stands, the Revenue Officer has no power to correct errors in the settlement record after final publication, unless they are made the subject of a dispute under section 106. In the millions of entries which find place in a settlement record some clerical errors are bound to creep in and it seems desirable to have a cheap and ready means of correcting them. We propose therefore that any Revenue Officer specially empowered in this behalf by the Local Government should be able to correct *bona fide* mistakes, after giving due notice to all the parties concerned.

109. Subject to the provisions of section 109A, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, [suit instituted or proceedings taken under sections 105 to 108 (both inclusive).]

Bar to jurisdiction of Civil Courts.

The words, figures and brackets within heavy brackets at the end of the section have by s. 31, Act I, B.C., 1907 been substituted for the words and figures "or suit instituted under section 105, section 106, section 107, or section 108." The Select Committee in their report on the Bill of 1906 say :—"An amendment of section 109 has been rendered necessary owing to the new section 105A, which it is proposed to insert in the Bill. The words "suit" and "application" do not cover all questions which may arise in the course of proceedings for the settlement of suits."

This section supplements the provisions of sec. 107. It makes it clear that where a settlement of land revenue is not being or is not about to be made, if applications or suits have been made or instituted under this part of the Chapter, the Civil Courts cannot entertain any applications or suits relating to the same matter.

But this will not prevent their entertaining a suit in which persons recorded as tenants in a record-of-rights, which has not been finally published, are sued as trespassers for possession and mesne profits (*Trailokyanath Basu v. Macleod*, 28 Calc., 28).

Limitation.—The period of limitation for such a suit is either 1 year under art. 14, Sch. II, of the Limitation Act or 6 years under art. 120 and a tenant after the expiry of the period of limitation cannot bring a suit for the alteration of his rent under the guise of a suit for the amendment of a certificate under the Public Demands Recovery Act (*Ashutosh Nath Rai v. Abdul*, 28 Calc., 676). Art 14 of Sch. II of the Limitation Act does not apply to such a suit (*Azin Bindh Upadhyay v. Mohan Bikram Sha*, 30 Calc., 27 ; *Ram Ghulam Singh v. Bishnu Prakash Narain Singh*, 11 C. W. N., 48).

109A. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under [sections 105 to 108 (both inclusive)].

Appeals from
decisions of
Revenue Offi-
cers.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue Officer under [sections 105 to 108] [A], (both inclusive) and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure (secs. 100-103 Act V of 1908) an appeal shall lie to the High Court from the decision of a Special Judge in any case under [this section (not being a decision settling a rent)] as if he were a Court subordinate to the High Court within the meaning of the first section of that Chapter :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 [or settled under section 105 or section 108].

This section does not differ materially from section 108 of the former Chap. X. The words in light brackets have been added by Act III, B. C., of 1898, but make only verbal alterations in the terms of the section. The letter A in heavy brackets after the figures 108 in sub-section (2) has

been inserted by s. 32, Act I, B. C., 1907, as a consequential amendment. The Select Committee in their report say :

“The addition to this clause allows an appeal to the Special Judge against an order of a Revenue-Officer correcting an error in the settlement record under section 108A, which we propose to insert in the Act. It is not likely that the right of appeal will often be exercised in such cases, but it seems advisable to provide some safeguard against a possible improper use of his powers by the Revenue Officer.”

First appeal.—There is no appeal to the Special Judge from an order of a Settlement Officer finding that the standard of measurement to be used in measuring the lands of a village is a pole of 7 feet 9 inches (*Narahari Jana v. Hari Charan Paramanik*, 26 Calc., 556). There would seem to be no appeal from an order of a Settlement Officer disposing of an “objection” under sec. 105 of the former Chap. X, as his order under that section is not a “decision” within the meaning of sec. 108 (2).

There is no appeal from an order of remand by a Special Judge (*Mathur Chandra Mazumdar v. Tara Sankar Ghosh*, 7 C. W. N., 440).

Second appeals.—Under the former Chapter X it has been held that no second appeal lies against, nor can the High Court interfere under sec. 622 of the Civil Procedure Code with the order of a Special Judge in regard to the settlement of rents (*Sheewarat Koer v. Nirpat Rai*, 16 Calc., 596 ; *Kirat Narain v. Palakdhari Pandey*, 17 Calc., 326 ; *Achha Mian v. Durga Charan Laha*, 25 Calc., 146 : 2 C. W. N., 137). No second appeal relating to such a matter will lie under the terms of the present section (*Ram Bishen Raut v. Rajaram*, 33 Calc., 832). The words “a decision settling a rent” in section 109A of the Bengal Tenancy Act do not mean and include any decision upon the question what is or what ought to be the rent. They mean only a decision settling a fair and equitable rent in place of the existing rent, and the words do not include a decision determining what the existing rent is.

A second appeal lies to the High Court, from a decision of a Special Judge reversing or affirming the decision of a Settlement Officer, who decided under section 106 of the Bengal Tenancy Act what was the rent payable by the plaintiff, it not being “a decision settling a rent” within the meaning of section 109A of the Bengal Tenancy Act (*Ramani Prasad Narain v. Adaiya Gossain*, 31 Calc., 380).

But the contrary was held in a subsequent case in which it was laid down that the words “not being a decision settling a rent” refer not only to a decision by which existing rents are varied, but also to one by which existing rents are maintained. When, therefore, a Special Judge on appeal from a decision of a Settlement Officer on an application by

landlord under sec. 105 (1) decided that no case had been made out for an enhancement of rent ; *held*, that this is a decision “settling a rent,” and consequently no second appeal lies (*Rameswar Singh v. Bhaneswar Jha*, 4 C. L. J., 138 : 33 Calc., 837). Similarly it has been held that an order fixing a limit to enhancement is an order settling a rent and no second appeal lies (*Sambhu Chandra Hazra v. Purna Chandra Pal*, 35 Calc., 176 : 12 C. W. N., 122 : 7 C. L. J., 103). But see *Preobast Narain Singh v. Murat Bai* (13 C. W. N., cciv).

It was also held under the former Chap. X, that no second appeal lay from an order of a Special Judge dismissing an appeal on the ground that there was no appeal to him in a case of a boundary dispute which had been tried and decided by a Settlement Officer acting as a Survey officer under Part V of the Bengal Survey Act, V, B. C., of 1875 (*Irshad Ali Chaudhri v. Kanta Prosad Hazari*, 21 Calc., 935). But a second appeal lies from the decision of a Special Judge on questions with regard to the prevailing standard of measurement, area of lands in the possession of tenants and the liability of tenants to pay rent on account of any excess land (*Mathura Mohan Lahiri v. Uma Sundari Debi*, 25 Calc., 34). The rule laid down in this case cannot apply when there has been no measurement, when the Settlement Officer has done nothing but settled the length of the measure to be used in measuring the lands of the village, and when the order of the Special Judge is only to the effect that no appeal lay to him from this order of the Settlement Officer (*Narahari Jana v. Hari Charan Paramanik*, 26 Calc., 556).

In *Dengu Kazi v. Nobin Kissori Chaudhrani* (24 Calc., 462 : 1 C. W. N., 294) it has been laid down that, whenever under the former Chap. X “a dispute” arises, whether before or after the publication of the draft record, as to the correctness of an entry which the Revenue Officer proposes to make or has made in the record that he is preparing, his decision of such a dispute is a decision in a proceeding under sec. 106, and a second appeal from the decision of the Special Judge in appeal from such a decision lies to the High Court under sec. 108 (3). When the decision of the Judge does not settle a fair and equitable rent, but merely proceeds on the ground that there was no excess land, and therefore no rent to be settled, a second appeal lies (*Rajkumar Protap Sahai v. Ram Lal Singh*, 5 C. L. J., 538). A second appeal lies in a proceeding under s. 106. No second appeal lies in a proceeding under s. 105. If, however, such matters are not kept separate, a second appeal is maintainable in respect of the matters coming under s. 106 (*Kali Kissore Pal v. Gopi Mahun Rai*, 5 C. L. J., 34n : 9 C. L. J., 574).

Court-fee duty on second appeals.—In *Petu Ghorai v. Ram Khelawan Lal*, (18 Calc., 667), it was decided that the Court-fee payable

on a memorandum of appeal presented to the High Court under sec. 108, sub-sec. (3) was Rs. 10, as prescribed by art. 17, clause vi of Schedule II of the Court Fees Act. But in the Full Bench case of *Upadhyya Thakur v. Persidh Singh*, (23 Calc., 723) this decision was set aside and it was held that the proceedings in a case of settlement of rents did not constitute a suit, and that the Court-fee duty was only 8 as. under art. 1, clause (b), para 2, Sched. II of the Court Fees Act (VII of 1870).

High Court's powers of revision under Court's Charter.—In *Upadhyya Thakur v. Persidh Singh*, (23 Calc., 723) it was ruled that the Court of a Special Judge is a Court subordinate to the High Court, and that, therefore, the High Court has power to interfere under sec. 15 of the Court's Charter with his orders in cases in which no second appeal lies.

Part IV.—Supplemental Provisions.

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[109B. (1) In framing a record-of-rights, and in deciding disputes, under this Chapter, the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant,

but he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose

109B. In all proceedings under this Chapter, the Revenue officer may presume that

Power of Revenue-officer to presume that agreements or compromises are lawful.

an agreement or compromise made or entered into by any landlord and his tenant is lawful, but when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties he shall not give effect to such agreement or compromise until he has given reasonable notice to such

of settling a dispute as to the rent payable, the Revenue-officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise, unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—*A*, a proprietor, agrees that *B*, his tenant, shall be recorded as an occupancy-raiyat; this affects the rights of the tenants of *B*. The Revenue Officer must, under sub-section (3), inquire

third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

Section 109 B as enacted in Bengal Act I of 1907, places various restrictions on the settlement of disputes by compromise. The Select Committee say "However necessary the provisions of section 109 B of the Bengal Act may be in Behar, we are satisfied that they are not appropriate to the conditions prevailing in many of the Districts of Eastern Bengal, with their turbulent and excitable population, and we fear that if it is to be made incumbent on the Revenue-officer, to enquire into the circumstances attending each and every agreement, settlement operations will stir up much strife and will revive many disputes happily settled.

We therefore propose to substitute for section 109 B an amendment which taken with the definition of rent and other provisions of the existing law, make it clear that the Revenue-officer has full power to inquire into and disregard inequitable agreements and compromises, and will yet leave it open to him to act upon agreements and compromises when they appear to be reasonable and when both parties are perfectly satisfied.

Section 109B being amended in the above manner section 109C as

whether *B* is a tenure-holder or a tenant, as enacted in Bengal has been omitted raiyat, as defined in section 5. If as unnecessary and section 109 D he finds on the evidence that *B* is a tenant, he has been altered and enacted as raiyat, he may give effect to the section 109 C." agreement, but shall not do so if he finds that *B* is a tenure-holder.]

Added to the Act by s. 33, Act I, B. C., 1907.

This is one of the most debated clauses of the Bill of 1906. It was at first proposed to provide that it should not be compulsory for Revenue Officers in proceedings under Chapter X to give effect to illegal and unfair or inequitable compromises and to make it obligatory on them to disregard compromises which contravene the provisions of section 29. The Select Committee in their report say :

"We have made considerable modifications mainly in consequence of the criticisms which have been directed against the words "unfair and inequitable," which were used in the clause as originally drafted. It has been represented, we think rightly, that such words are too vague to afford any proper guidance to the Courts and Revenue Officers dealing with agreements or compromises. We consider that it will be best to provide specifically that no effect shall be given to any provisions, embodied in a compromise or agreement filed before a Court or Revenue Officer, which, if embodied in a contract between landlord and tenant, could not be enforced under the Act. We further consider it desirable to provide for the case of agreements or compromises, purporting to be made in settlement of a dispute, or affecting the rights of third parties."

[109C. (1) Notwithstanding anything contained in section 109B, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue-officer specially empowered in this behalf by the Local Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act; and the provisions of section 113 shall apply to a rent so settled.

Power of Revenue-officer to settle rents on agreement.

(2) A landlord or tenant may appeal to the Special Judge appointed under section 109A on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.]

Added to the Act by s. 33, Act I, B, C., 1907, but omitted from the law of Eastern Bengal by s. 33, Act I. E. B. C., 1908.

The Select Committee on the Bill of 1906 with reference to this section observe :

“ While the majority of us consider it essential that the Revenue Officer should not be compelled to give effect to provisions in an agreement or compromise, which could not be enforced if embodied in a contract, we consider that some discretion should be allowed in dealing with rents, which, though technically illegal, are such as might be settled as fair and equitable. We understand that at present officers of the Settlement Department are allowed, with the sanction of the Board of Revenue, to disregard technical illegalities in respect of rents, which though they contravene the provisions of section 29 are fair and equitable and are agreed to by the landlord and tenant. It is clearly inadvisable that in such cases, the parties should be forced into litigation regarding rents, which, though technically illegal, would be settled as fair and equitable by any Court, and we consider it desirable to regularise the present practice. We therefore propose that where, in the course of the framing of the record, the parties agree upon a rent, a Revenue Officer specially empowered in this behalf by the Local Government may, if he finds such rent to be fair and equitable, settle it as such, even though it may not be the rent legally payable. We provide for an appeal to the Special Judge on the ground that the parties did not agree to such a rent, and we also propose to give the Board of Revenue power to revise any rent settled under

the section within one year of the date of the order settling the rent. We believe that the section as drafted will be useful as saving the parties from unnecessary litigation in regard to rents, by giving the Revenue Officer power, under certain safeguards, to settle a rent, to which the only objection which can be taken, is that, if fixed by a contract, it could not legally be recovered. A Revenue-Officer in framing the record usually has opportunities of judging of the fairness and equity of the rents claimed and admitted, and it is not necessary in all cases to confine him to the record of the rent legally payable."

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<p>[109D. A note of all rents settled and of all decisions of disputes, on revision or appeal under section 108, section 109A, or sub-section (2) or sub-section (3) of section 109C, shall be made in the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record.]</p>	<p>109C. A note of all rents settled and of all decisions of disputes on revision or appeal under section 108 and section 109A shall be made in the record-of-rights finally published under sub-section (2) of section 103A and such note shall be considered as part of the record.</p>
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Added to the Act by s. 33, Act I, B. C., 1907.

Section 109C as enacted by Act I, B.C., of 1907 for Western Bengal has been omitted and 109D has been altered and enacted as 109C.

Regarding this section the following appears in the Notes on Clauses of the Bill of 1906 :

" This clause is intended to rectify what was apparently an oversight in the Amendment Act of 1898. Under section 107, (2), the Revenue Officer is required to make in the record-of-rights a note of all rents settled under section 105 and of all decisions of disputes under section 106, and this note is declared to be a part of the record. There is no corresponding provision as to the entry of orders passed regarding such rents or disputes, on revision under section 108, or on appeal under section 109A. It is clearly advisable that a note of such revisional or appellate orders should be made in the record, in order to make the record complete. The clause provides for this being done. As appeals are frequently not decided till after the Settlement

Officer has left the district, the proposed section abstains from prescribing by what officer the note of the revisional or appellate decision shall be made. The Government or the Board of Revenue will have power to prescribe this by rules made under the Act or by executive order."

110. When a rent is settled by a Revenue Officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the Settlement Rent Roll :

Date from
which settled
rent takes effect.

Provided as follows :—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of sections 191 and 192, take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue Officer ;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

The first clause of this section is founded on sec. 110 of Chap. X, as it originally stood. The provisos are taken with slight modifications from s. 2, Act V, B. C., of 1894, now repealed. With reference to these provisos, in the Statement of Objects and Reasons for the Bill, para 26, it is said :—

“The justice and expediency of these provisions will be manifest. When a general settlement of rents is being made in a private estate, if the existing rent of particular tenants was settled by contract legally binding on the parties, the term of which has to run for a few years, there is no reason why a fair rent should not be settled for such tenants, while the Revenue Officer is on the spot, on the application of the parties, to take effect from the expiration of the term, or from a later date fixed by the Revenue Officer. The same remark applies to settlement of rents for purposes of settlement of Revenue. The existing rents having been ordinarily fixed for the period of settlement of revenue, there is no reason why they should be altered during the currency of that period, though proceedings for the preparation of a record-of-rights and the settlement of rents may have to be undertaken, for the purposes of settlement of revenue, a few years in advance of the expiration of the term of the current settlement of revenue.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

Stay of proceedings in Civil Court during preparation of record-of-rights.

(a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land-revenue is not being made or is not about to be made—until three months after the final publication of the record-of-rights,

entertain [any application made under section 158, or] any suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the record-of-rights applies.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., Feb. 9th, 1903) but the words “subject to the provisions of section 104H” have been omitted. But the Chota Nagpur Division has now got a separate Tenancy Act of its own (Act VI, B. C., of 1908). The words in heavy brackets were inserted by s. 34, Act I, B. C., 1907 and Act I, E. B. C., of 1908.

Effect of this section.—This section is practically the same as sub-section (1) of section 111, as originally framed. The jurisdiction of the Civil Court is not ousted in cases of other classes than those referred to in this section ; so that when a tenant has agreed to pay additional rent at a stipulated rate for excess land found on measurement to be in his possession, a suit for arrears at this rate is not barred under the provisions of this section ; for such a suit is not a suit for alteration of the rent but one for arrears of rent, and it does not become a suit for alteration of rent merely because subsequently to the accrual of the arrears there have been settlement proceedings, and land measured in connection therewith (*Ramjan Ali v. Amjad Ali*, 20 Calc., 903). But this section does not give the Civil Courts power to interfere, save as provided in sec. 104 H, in regard to rents settled under Part II or under sec. 105, Part III, of this Chapter, or in matters which have already formed the subject of "dispute" between the parties (sec. 106), and with regard to which the Revenue Officers' decisions are final (secs. 107 and 109).

This section does not bar a suit brought against persons recorded as tenants in the record-of-rights, when they are sued as trespassers for possession and mesne profits. What is barred by s. 111 is the entertainment by a Civil Court of any suit or application for the determination of the status of any tenant in the area to which the record-of-rights applies until three months after the final publication of the record-of-rights (*Trailokhyo Nath Basu v. Macleod*, 28 Calc., 28 ; *Rajaram Sing v. Sheo Prasad Rai*, 3 C. L. J., 63 n). See also *Hanuman Jha v. Rameshwar Sing*, (10 C. W. N., cclxviii).

Where the plaintiff alleges that the defendant took land from him agreeing to pay a fair rent therefor, but failed to come to any arrangement, the plaintiff can sue in the Civil Court for determination of the fair rent. There is nothing in the Bengal Tenancy Act to bar the trial of such a suit (*Durgadas Rakhit v. Madhab Chandra Palmal*, 1 C. L. J., 78n).

Change made by Act I, B. C., of 1907.—With regard to the alteration in the section made by sec. 34, Act I, B. C., 1907, the Select Committee in their report on the Bill say :

"We have inserted this clause in order to prevent an inquiry by a Civil Court into questions of rent and status simultaneously with the preparation of a record-of-rights by a Revenue-officer. It seems to us to be inadvisable that two authorities should be engaged in the same inquiry at the same time."

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F :

Limitation of Jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.

I of 1877.

Extended to the Chota Nagpur Division, except the district of Manbhum (Not., Feb. 9th, 1903), but the words "or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F", and the words in the proviso "framed in pursuance of an order made under section 101, sub-section (2), clause (d)," have been omitted. But the present law there, is Act VI, B. C., of 1908.

Clause 1 of this section is taken from sec. 158 (2), clauses iv to vi, of the Punjab Land Revenue Act, (XVII of 1887). The proviso is founded on sec. 45 of the same Act.

The first part of sec. 111A prohibits suits which seek to take undue advantage of mere technical defects in the procedure leading up to or involved in settlement proceedings. The section further prohibits the alteration of rent once settled except to the extent allowed by sec. 104H, and the proviso in virtue of which suits of a declaratory nature may be brought, cannot be read as prohibiting suits for the recovery of arrears of rent (*Nasarulla Mia v. Amiruddi*, 3 C. L. J., 133). See also *Ram Ghulam Singh v. Bishnu Prakash Narain Singh*, (11 C. W. N., 48).

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[111B. (1) Where a re-
Stay of suits in which cer-
 tain issues arise. cord-of-rights
 has been pre-
 pared and finally publish-
 ed in respect of the land
 in any area in which a
 settlement of land-revenue
 is not being made, or is
 not about to be made, no
 application or suit affect-
 ing such land or any
 tenant thereof shall, with-
 in three months from the
 date of the certificate of
 final publication of such
 record-of-rights, be made
 or instituted in any Civil
 Court for the decision of
 any of the following issues,
 namely :—

- (a) whether the land is
 or is not liable to the
 payment of rent ;
- (b) whether the relation
 of landlord and
 tenant exists ;
- (c) whether the land is
 part of a particular
 estate or tenancy ;
 or

111B. (1) Where a re-
Stay of suits in which certain
 issues arise. cord-of-rights
 has been pre-
 pared and finally publish-
 ed in respect of the land
 in any area in which a
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 is not being made, or is
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 application or suit affect-
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- (a) whether the land is
 or is not liable to the
 payment of rent ;
- (b) whether the relation
 of landlord and ten-
 ant exists ;
- (c) whether the land is
 part of a particular
 estate or tenancy ;
 or

(d) whether there is any special condition or incident of the tenancy, or whether any right-of-way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 106 involving the decision of the same issue.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit for the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights or before a Revenue-officer under section 106, he is

(d) whether there is any special condition or incident of the tenancy, or whether any right-of-way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such Civil suit such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publi-

unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent pending a final decision on the issue.

And, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.]

cation of the record-of-rights, or before a Revenue-officer under section 106, he is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue :

And, after the issue has been finally decided, he shall settle a fair rent as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

Sub-section (2) of the new section 111 B has been altered in this Act so as to allow the Revenue officer to entertain a suit under sec. 106, or proceeding under sec. 105A in re-

spect of issues not contested in the Civil Court :—

“We are of opinion that when proceedings before a Revenue-officer and a suit before the Civil Court involve one common issue this should not prevent the Revenue-officer from trying other issues. We also think that it should be made clear that the institution of a suit not proceeded with, does not oust the Revenue-officer's jurisdiction.”

Under the Bengal Act the Revenue-officer cannot under similar circumstances entertain a suit under sec. 106 but there is no bar to his taking proceedings under sec. 105 A.

This section was introduced into the Act by sec. 35, Act I, B. C., 1907. Its object was to meet certain practical difficulties which had arisen owing to suits regarding the same subject matter being filed simultaneously in the Civil Courts and before the settlement authorities. The Hon'ble Babu Jogendra Nath Mukherji, in explaining the section in Council, spoke as follows :

“It is necessary to explain the reasons which necessitated this amendment, and some slight history as regards the process of framing records is necessary to be placed before Hon'ble Members. Those Hon'ble Members who are not very familiar with the proceedings under Chapter X of the Bengal Tenancy Act, in a permanently-settled area, do not probably know that there are several stages through which the record-of-rights is taken. The first stage is the demarcation of the boundary of villages ; then comes the stage when officers of subordinate rank fill in different columns tentatively, and then the next year the attestation stage comes, that is, an officer of superior rank verifies the entries in the record-of-rights and decides any matter necessary for him to decide in order to retain the record as far as possible at that stage in a correct way ; then the preliminary publication of records takes place, and after that objections are invited and considered by the Settlement Officers. After the decision of objections under section 103A of the Bengal Tenancy Act, the final record is framed and published and very often at this stage, when a person who has preferred an objection in respect of an entry in the record-of-rights, finds that his objection has been lost, he files a suit in the Civil Court.

“When the final publication takes place, the *zamindar*, or rather anybody who has benefited by the record, comes in and files an application under section 105 for settlement of a fair rent, and generally it is the *zamindar* who does so. When an application like that is put in, various questions are raised by the party against whom that application is preferred; the objections may be on the grounds that the man who has been entered as a tenant is not really the tenant, that he holds his land rent-free or it may be that the status which has been recorded has not been correctly recorded, that is, that he is not a tenure-holder but a *raiya* and so forth.

“Section 105A, which has been accepted by Hon'ble Members to-day, provides for contingencies of settling fair rents under section 105; because unless and until those questions are decided a Revenue-Officer cannot settle a fair rent, for it may be that the land is really rent-free, not rent-paying. In such a case, it will be a pure waste of time for a Revenue-Officer to settle a fair rent and then to unsettle it, after it is decided that the land is not rent-paying. The whole of his labour is lost in that case. I need not go into the history of this section 105A, which has been accepted to-day; it will suffice for me to say that, if that section had not been adopted, matters would have been made considerably difficult. That is one stage of the case.

“The tenant, it may be, after an application under section 105 has been filed—this has to be filed within two months after the date of certificate of final publication—and before he gets a summons in the case or before he is called upon to appear and put in his written statement, may go to the Civil Court or to the Revenue Court under section 106 and file a suit. Provision has been made covering this contingency, and the freedom of choice of the plaintiffs as to the venue of their suits at this stage has been left untouched.⁽¹⁾ There is, however, no provision in the Bengal Tenancy Act providing against a contingency like the one contemplated by this new section 111B.

“I have already submitted that, before final publication of the record and after the decision of an objection under section 103A, a person may go to the Civil Court and file a suit. But what is the Settlement Officer, under these circumstances, to do, for instance, when there is an application under section 105 pending before him? Up to this time, parallel case have been going on simultaneously in the Civil Court as well as in the Settlement Department. The Revenue Officer may now sometimes say that he had the first seisin of the case, and the Civil Court therefore has no jurisdiction to try the issues that have arisen before him at that time; the Civil Court saying, on the other hand, we are a Civil Court and there is no authority by which we can be divested of jurisdiction. In this way, considerable difficulty has ensued, and the difficulty has been experienced not only by the landlord but by the *raiya* as well. In order to prevent this double mode of procedure, this section 111B has been proposed.

(1) i. e., the provisos added to sections 105A and 106 by Act I, B. C., of 1907.

“Three months after the final publication of the record, I may repeat, is the period during which a person can file a suit under section 106 of the Bengal Tenancy Act; so that by the provision contained in the proposed section 111B, time is given to a party to elect whether he should go to the Civil Court or to the Revenue Court as plaintiff. The issues covered by this section are the following, namely:—Whether the land is or is not liable to payment of rent; whether the relation of landlord and tenant exists; whether the land is part of a particular estate or tenancy, and whether there is any special condition or incident of or whether a right of way or easement attaches to the land comprising the tenancy? Now, these are questions which very generally crop up in connection with the decision of cases under section 105, and it may be questioned why is it that the wording of this section is somewhat different from the wording of section 105A; as it will be seen that there are four classes of issues contemplated by this section 111B, whereas there are more than four classes of issues contemplated by section 105A? Evidently, it was intended that the nature of the questions or issues intended to be dealt with should be the same in both these sections.

“It will be remembered, however, that section 105A was worded with reference to the record as finally framed, and because the consideration of any issue mentioned in section 105A has to proceed upon the record as framed. Therefore, the wording of section 105A is slightly different from the wording of section 111B, so far as the classes of issues mentioned in each of these sections is concerned; but it will be seen that practically every question that comes up in section 105A comes also in section 111B, when coupled with section 111 which forms a complement to it. The wording is different, because of the fact that the wording of one section is directed to the record itself; whereas the other is independent of any such basis. I, therefore, submit that the matter of section 111B, together with that of section 111 and the matter of section 105A, are partially identical in point of the questions which they are intended to cover. Then we go on to the second clause:—

‘If, before the final publication of the record-of-rights in such area, a suit for the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not entertain any suit under section 106 involving the decision of the same issue.’

“This is a matter, the principle of which has already been accepted by the acceptance of the two amendments adopted by the Council, in the shape of the two provisos added to sections 105A and 106; and it is only with a view to prevent simultaneous suits in a Civil Court, and before the section 106 Officer, that this clause (2) is proposed.

“The third clause where, in the course of settling fair rents under section 105, the Revenue-Officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court, before the final publication of the record-of-rights or before a

Revenue Officer under section 106, he is unable to settle a fair rent until such issue is decided, the Revenue Officer shall stay the proceedings for the settlement of a fair rent, pending a final decision on the issue; and, after the issue has been finally decided, he shall settle a fair rent as if the record-of-rights had been framed in accordance with such decision. This is in exact consonance with existing practice. Where there is a parallel suit before the Civil Court the Revenue Officer while proceeding under section 105 or 106 is at sea and he does not know which way to turn; and this clause lays down the procedure for him.

"The last clause (4), where the making of an application or the institution of a suit has been delayed owing to the operation of sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

"This is a necessary clause: because when a plaintiff is stopped from filing a civil suit, it may be he loses his right to bring a suit in the Civil Court upon the expiry of the period of three months during which such suits are stopped. I have already submitted to the Council that the reason why the filing of civil suits is forbidden for three months after the final publication of records, is, to give time for election to the party concerned, and therefore it is right and proper that the period of limitation should operate in his favour during this period of three months. That is the object of clause (4).

"I think I have now briefly explained the object of section III B, and I hope Hon'ble Members will agree with me in thinking that this is a very necessary section. Great difficulties have been experienced for want of a definite procedure which would control parallel suits or stop parallel suits in the settlement and the Civil Courts, and the proposed section III B is calculated to give relief not only to the officers of Government concerned but to the general body of both landlords and tenants. With these words I recommend this section."

In answer to an objection that the section did not provide for a suit instituted in the Civil Court after the expiry of three months from the date of the certificate of final publication but before the decision of a similar suit instituted under section 106, the Hon'ble Babu Jogendra Nath Mukherji pointed out that this was already covered by section 109, under which the Civil Court is debarred from entertaining any suit concerning any matter which is or has already been the subject of a suit instituted under section 106.

EASTERN BENGAL & ASSAM.

112. (1) The Local

Power to authorise special settlement in special cases.

Government, with the previous sanc-

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Power to authorise special settlement in special cases.

Government, with the previous sanc-

tion of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, [or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer] with the following powers or either of them, namely :—

(a) power to settle all rents ;

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would, on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within

tion of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer, with the following powers or either of them, namely :—

(a) power to settle all rents ;

(b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would, on any ground, whether specified in this Act or not, be unfair or inequitable.

a specified area either generally or with reference to specified cases or classes of cases.

[(2a) A settlement of rents under this section, shall be made in the manner provided by sections 104 to 104J (both inclusive).]

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue Officer shall not take effect until it has been finally confirmed by the Governor-General in Council, [and the revision, by direction of the Board of Revenue under sub-section (2) of section 104G, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to a like confirmation by the Governor-General in Council.]

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue Officer shall not take effect until it has been finally confirmed by the Governor-General in Council, and the revision, by direction of the Board of Revenue under sub-section (2) of section 104G, of a record-of-rights, or any portion of a record-of-rights, prepared under this section, shall be subject to a like confirmation by the Governor-General in Council.

The words and sub-section in brackets have been added by s. 36, Act I, B. C., 1907. The words in brackets in sub-section (1) have been substituted for the words "invest a Revenue Officer acting under this Chapter."

Object of this section.—This section provides a special procedure intended to be resorted to only in exceptional circumstances in which the operation of the ordinary law is likely to prove insufficient. Sir Steuart Bayley in introducing the Bill into Council explained that this section was intended to take the place of Sir R. Temple's Agrarian Outrage Act (VI, B. C., of 1876), which had effect for only three years. "It seems desirable," Sir Steuart Bayley added, "that, in exceptional cases, in which it may be necessary to have recourse to this procedure the Government should have the power of going to the root of the dispute, and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period."

Object of alterations made by Act I, B. C., 1907. In the Notes on Clauses in the Bill of 1906, it was said :

"This clause is intended to give effect to one of the main objects of the Bill, *viz.*, to enable Government to take steps to reduce rents, in cases where these have been illegally enhanced, so as to be oppressive to the cultivators of the soil. It is possible that the Government has power to take such action under section 112, as it stands at present, but that section was incorporated in the Tenancy Act under a guarantee that it would be used only in cases of agrarian disturbance. Experience has shown, however, that certain landlords have been able to force illegal and oppressive rents on their tenantry, without creating any immediate agrarian disturbance. In such cases the Government proposes in future, to take action to reduce the excessive rents before any actual disturbance arises."

The Select Committee in their report on the Bill say :—

"Though it is probable that the Local Government would be justified in taking action under section 112, as it now stands, in cases where a landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights we think it advisable to remove all doubts on the point. We consider that the change in the clause as now redrafted is a more convenient way of emphasizing the fact. We consider that any revision of the record-of-rights by the Board of Revenue should be subject to confirmation by the Governor-General in Council, and have added sub-clause (3) accordingly."

The provisions of section 112 have never so far been put into force, one of the reasons apparently being that the section, as it stood before amendment contained no provision for a procedure which would render its working practicable. The special powers could only be conferred on

"a Revenue Officer acting under this Chapter," and in permanently settled areas, rents could only be settled under Chapter X on the application of landlords or tenants under section 105. It was considered unlikely that any such application would be made in areas to which the section might be applied. The amendments made enable any Revenue Officer to be invested with powers under the section. In settling rents, the procedure laid down in Part II of Chapter X will be followed, and the Revenue Officer will be able under section 104 to settle rents of his own motion for tenants of every class.

113. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced in the case of a tenure or an occupancy holding [or the holding of an under-raiyat having occupancy rights], for fifteen years, and, in the case of a non-occupancy holding [or the holding of an under-raiyat not having occupancy right], for five years; [and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a)].

Period for which
rents settled are
to remain unal-
tered.

(2) The said periods of fifteen years and five years shall be counted from the date [on which the rent settled takes effect under this Chapter].

The words in brackets have been added by the Amending Act of 1898.

Modifications in the section and reasons for them.—In the Statement of Objects and Reasons for Bill to amend the Tenancy Act, para. 27, it is said :—

"Section 113 of the Act provides that a rent settled shall not be *enhanced* in the case of an occupancy-raiyat for 15 years, and of a non-occupancy raiyat for five years, but there is nothing to prevent its being reduced within these periods respectively. The intention was to fix rents for the periods named, and it is obvious that the considerations in favour of preventing enhancements during these periods apply with equal force to reductions

of rents settled. The section has been amended so as to make it clear that reductions of the rents settled will not be permitted during these periods except on the ground of diminution of area or that specified in section 38 (a) of the Act."

A further modification made by this section relates to the position of under-raiyats. It will be observed that the parcels of land held by them are now referred to as "holdings," though in section 3 (9) "holding" is defined as a "parcel or parcels of land held by a raiyat." Again, formerly under-raiyats were in no way protected from repeated enhancements of rent, that is to say, their rents could be enhanced year after year until the maximum allowed by sec. 48 was reached. Now, the same protection as regards the period which must elapse after rents have been settled under this Chapter before any enhancement can be made, as is given to raiyats, has been conferred on under-raiyats.

114. [(1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter], in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred *

* * in carrying out the provisions of this Chapter in any local area, [estate, tenure or part thereof (including expenses that may be incurred [at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration] of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter)], or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions [and in such instalments (if any)], as the Local Government, having regard to all the circumstances, may determine.

[(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restora-

tion of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred] ;

(3) The portion of the aforesaid expenses which any person [is liable to pay] shall be recoverable by the Government as if it were an arrear of [land-] revenue due [in respect of the said local area, estate, tenure or part].

[(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.]

[*Explanation.*—The word ‘tenure’ in this section includes all revenue-free and rent free tenures and holdings within a local area, estate or tenure.]

Extended to the Chota Nagpur division except the district of Manbhum, (Not., Feby. 9th, 1903) but the words “in any case except where a settlement of land-revenue is being or is about to be made” have been omitted. But the present law there is Act VI, B. C., of 1908.

The words in light brackets have been added by the Amending Act of 1898.

By section 37, Act I, B. C., 1907, the words “*by the Government*” in sub-section (1) have been repealed ; the words in heavy brackets “at any time whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration” have been substituted for the words “from time to time in the maintenance ;” after the word “proportions” the words and brackets “and in such instalments (if any)” in sub-section (1) have been inserted ; the present sub-section (2) has been renumbered (3) ; and sub-section (4) has been added.

Reasons for modifications made by Act III, B. C., 1898.—In the Statement of Objects and Reasons of the Bill to amend the Tenancy Act, para. 28, it is said :—

“A somewhat important change in this section is proposed. As the section now stands, the proportion of the cost of a survey and record-of-rights

to be defrayed by each individual landlord or tenant must be recovered from *him* as an arrear of land-revenue under the Public Demands Recovery Act. It is practically impossible to carry out the provisions of the section as it stands. In Behar, where there are small estates and a great number of co-sharer proprietors, the amount recoverable from each individual co-sharer is sometimes less than one anna. To issue a separate certificate against each one of the individual co-sharer landlords, under such circumstances, would only subject them to unnecessary expense, while endangering the realization of the costs of the proceedings. It is, therefore, proposed to hold the whole estate or tenure, in case of proprietors and tenure-holders, liable for the proprietors' and tenure-holders' shares of the costs respectively. Since doubts have been expressed as to whether the Revenue Officer has authority to record the names of holders of revenue free or rent free lands, and, therefore, whether the holders of such lands are, under section 114, liable for any part of the costs of a survey and record-of-rights of the local area or estate in which they may be included, it is expressly provided that such lands are tenures for the purposes of this section, and, therefore, liable for their share of the costs, as they are also declared to be so liable under the alternative procedure for recovery of costs contained in Part III of Bengal Act III of 1895.

It is further provided that the expenses incurred in future for the maintenance of boundary marks and other survey marks erected in the course of preparing a record-of-rights, etc., shall be recoverable in the manner specified in section 114."

Reasons for modifications made by Act I, B. C., 1907.--In the Notes on Clauses to the Bill of 1906, it is said :

"When a survey and record-of-rights are undertaken on the application of landlords and tenants, the costs are usually met in the first instance from deposits made by the applicants, and not from Government funds. In such cases, it is often equitable to recover a share of the expenses from the other landlords and tenants concerned, who also benefit by the preparation of the record-of-rights. The proposed omission will make clear the legality of this course.

In the course of survey and settlement operations, permanent boundary marks are erected at all points where the boundaries of three villages meet. Arrangements are made for the repair and restoration of these marks from time to time as may be necessary, after the completion of the original survey proceedings. Such marks, if properly maintained, are of great utility in preventing boundary disputes from arising, and are, in fact, a valuable adjunct to the record-of-rights. It is therefore proposed to take power to recover in advance the estimated cost of the maintenance, repair and restoration of these boundary marks for a period of fifteen years together with the cost of the preparation of the record-of-rights. The cost of maintaining the boundary marks for fifteen years will be an insignificant addition to the cost of the preparation of the record-of-rights, and it will be more convenient both to the

Government and to the landlords and tenants to collect both sums simultaneously, than to have a separate proceeding for the recovery of the cost of maintenance of boundary marks. The period of fifteen years has been fixed, because this is the time for which the rents of tenures and occupancy holdings settled under Chapter X have effect under section 113.

After the preparation of a record-of-rights, it is usual to distribute copies of it, together with copies of the village maps to the landlords and tenants. No proceedings under Chapter X can be considered complete without this. In order to remove all doubts, it is proposed to provide that the cost of the preparation of these copies shall be deemed to be part of the expenses incurred in carrying out the provisions of the Chapter."

The words "in such instalments (if any)" were added by the Select Committee to legalize the present practice of the government of recovering costs by instalments.

Procedure for recovery of expenses.—For the rules for the apportionment and recovery of costs under this section, see Part I, Chapter VI and Part II, Chapter XIV of the Board's Settlement Manual, 1908. A further procedure for the recovery of the expenses of a survey and of the preparation of a record-of-rights is provided in Act III, B. C., of 1895, (The Land Records Maintenance Act) Part III, ss. 28-32 and 36 (1) (c).

Principles regulating apportionment and realization of costs.—In Government order No. 1305 L. R. dated 30th March, 1899, relating to the survey of the Madhupur estate in Cuttack, it is stated that

"the principles which guided the Government in the apportionment and realization of costs of survey and record-of-rights are—

- I.—That the costs cannot be recovered from either landlord or tenant if they have been incurred for the purposes of a settlement of land revenue [section 114 of the Bengal Tenancy Act and section 28 of Act III (B. C.) 1895].
- II.—That in apportioning the costs in permanently-settled estates it should be considered who is responsible for the state of things which necessitated the survey and record-of-rights.
- III.—That the apportionment between landlords and tenants should be made with due regard to the benefits received by the parties from the survey and record-of-rights."

115. When the particulars mentioned in section

Presumption as to fixity of rent not to apply where record of rights has been prepared.

102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

No change has been made in this section. The presumption referred to is that which arises under section 50 in favour of a tenure-holder or raiyat who proves that he has held at an unvaried rent or rate of rent for twenty years, that he has held at that rent or rate of rent from the time of the Permanent Settlement.

The provision in this section against the presumption as to fixed rent has no application in a suit brought by a tenant for the purpose of contesting the correctness of the decision of a Revenue Officer in regard to the entry as to the status of a raiyat in a record-of-rights. In such a suit the tenant is entitled to the benefit of the presumption (*Secretary of State v. Kajimudin*, 26 Calc., 617): also in a suit for enhancement brought by the landlord after a record of rights, if he can prove uniform payment for 20 years before the entry (*Maharaja Radhakishore Manikya Bahadur v. Umed Ali*, 12 C. W. N., 904).

EASTERN BENGAL & ASSAM.

[115A.] In the demarcation of village boundaries for the

Demarcation
of village bound-
aries.

purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue Officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, if any ;

and, where village maps prepared at a pre-

115A. In the demarcation of village boundaries for the

Demarcation
of village bound-
aries.

purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue Officer shall, so far as is possible and subject to the provisions of Bengal Survey Act, (V of 1875), preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (10) (b) of section 3 as

vious revenue survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.]

This section has, been added by s. 38, Act I, B. C., 1907. See note to sec. (3) (10), pp. 37-38.

defining villages and where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

The alteration effected by this section is one of drafting. There is no material difference in the result.

The Bengal Act provides for reference to village maps of the Revenue Survey. This Act allows reference to some other maps indicated in clause 106 of sec. 3 as amended by the Act. The Select Committee say "we are of opinion that when a survey has been adopted as defining villages, the Revenue Officer should adhere as closely to the maps of such survey, as in other cases to the maps of the Revenue Survey."

Remaining sections of Act III B. C., 1898.

The following three sections (8, 9 and 11) of Act III, B. C., of 1898, (extended to Orissa, Not. Nov. 5, 1898), do not modify the provisions of Chapter X, but are closely connected with it. They are therefore, printed here.

8. All records published under section 105, of the Bengal Tenancy Act, 1885, before the commencement of this Act, whether in draft or final form, shall be deemed to have been duly published.

Validation of
publication of
past records.
VIII of 1885.

"This section is inserted in order to settle technical doubts which have been expressed as to the sufficiency, from a purely legal point of view, of the methods in which in some cases records have been published." (Statement of Objects and Reasons, para 29).

9. (1) Every settlement of rent or decision of a dispute by a Revenue Officer under section 104 or section 106 of the Bengal Tenancy Act, 1885, before the commencement of this Act, in respect of which no appeal has, before the commencement of this Act, been preferred to the Special Judge appointed under section 108 of the Act, shall have the force and effect of a decree of a Civil Court in a suit between the parties and shall be final :

Effect of settlements of rent and decisions by Revenue Officers made before commencement of this Act.

VIII of 1885.

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV of 1882.

This section is founded on sec. 107 of the former Chapter X and has been

“introduced in order to make it quite clear that a decision of a dispute or a settlement of a rent, by a Revenue Officer under Chapter X of the Tenancy Act, before the passing of this Bill, is to have the force and effect of a decree of a Civil Court in a suit between the parties. This was the intention of the law, and it is in pursuance of that intention the proceedings for decisions of disputes and settlement of rents have hitherto been carried on.”

(Statement of Objects and Reasons, para 30).

The effect of sec. 9 of Act III of 1898, B. C., is to make final the decisions of a Revenue Officer made under sec. 106 of Act VIII of 1885 before the commencement of the amending Act, only in regard to disputes which could be decided by the Revenue Officer under sec. 106, Act VIII of 1885. A question of title between rival purchasers of a tenure could not be dealt with and determined under sec. 106, Act VIII of 1885, before its amendment by Act III of 1898, B. C. A decision on such a question

before the commencement of the amending Act does not prevent the question from being now litigated in the Civil Court (*Donay Das v. Keshab Pruhti*, 8 C. W. N., 741). In a proceeding under Chap. X before the passing of Act III, B. C., of 1898, the settlement authorities found that the lands claimed by the tenants as their rent-free lands were not rent-free, and they accordingly assessed them with rent; *held*, that by s. 9, Act III, B. C., of 1898, the Civil Court is precluded from adjudicating on the same matter (*Nabin Chandra Chakravartti v. Radha Kishore Manikya*, 11 C. W. N., 859). "When the Settlement Officer or Assistant Settlement Officer who has passed a decree has left the district on transfer or at the close of the operations, any Revenue Officer (see the term defined in section 3 (17) of the Bengal Tenancy Act and also the Notification cited under Rule 3, page 3 above) who would have had jurisdiction to try the suit in which the decree was passed, or who is in charge of the records of the case, can execute it (*vide* section 649 of the Civil Procedure Code, and the ruling in Indian Law Reports, 6 Calc. 513)." Rev. Cir. Sep. 1904.

11. Bengal Act V of 1894, (an Act to remove doubts which have arisen in connection with the re-settlement of land-revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, 1885) is hereby repealed.

Repeal of
Bengal Act V,
1894.

Act V of 1894, B. C., introduced trifling modifications in secs. 101 and 110 of the former Chap. X. It was passed with the view of facilitating settlement operations in Orissa. It is no longer necessary, and has accordingly been repealed.

Inspection of settlement records.—The Board of Revenue have issued the following circular on the subject of the custody, inspection and grant of copies of settlement proceedings :—

"The original settlement records of private and wards' estates surveyed and settled under Chapter X of the Bengal Tenancy Act are to be made over to the Collectorate record-rooms of the districts in which the estates are situated. These records are public documents, and the rules for their custody are the same as those which apply to the custody of other public documents. If parties concerned with the survey and settlement proceedings desire to inspect the records and take copies of them, the rules in Section VIII are applicable to these as to all other records." (Bd's. C. O., No. 6, May, 1890).

In Rule 7, Chapter VI, of the Government Rules under this Act are specified the documents which form the Settlement Records in proceedings under Chapter X of the Act.

Court, Process, and Copying Fees in Survey and Settlements.—The Board of Revenue has prescribed the following rules for the levy of Court, Process and Copying fees in Surveys and Settlements. (See Board's Circular No. 13 of February 1899, and Survey and Settlement Manual, 1901, Part I, Chap. 3).

“ Court-fees.”

1. When a survey and record-of-rights are undertaken with a view to the settlement of land revenue, applications or petitions to a Revenue Officer making a settlement of land revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interest therein, if presented before the final confirmation of the settlement under section 104F (3), are not chargeable with any fee [section 19 (ix) of the Court Fees Act of 1870].

2. In the case of proceedings under Chapter X of the Bengal Tenancy Act as amended by Act III (B. C.) of 1898, when a settlement of land revenue is not being, or about to be made, a Revenue Officer is a Revenue Officer within the meaning of Schedule II, clause 1 (b) of the Court fees Act, and applications or petitions filed before him, unless they are exempted under the several notifications contained in Rule 3 below, must be stamped with a Court-fee of eight annas :

Definition of Revenue Officer and Revenue Court.

(i) Provided that, as when trying a suit instituted for the decision of a dispute under section 106, a Revenue Officer acts as a Civil Court, plaints in such cases shall be stamped according to the nature of the subject-matter in dispute in accordance with article I of Schedule I or articles 5 and 17 of Schedule II of the Court Fees Act, and all applications and petitions made in the trial of such suits shall be stamped as required in the cases of applications or petitions to a Civil Court under Schedule II of the Act.

(ii) Provided that applications for settlement of rents under section 105, Bengal Tenancy Act, must be stamped in accordance with Rule 3 (ii) below.

3. In exercise of the powers conferred by section 35 of the Court Fees Act, VII of 1870, and section 105, sub-section (3) of the Bengal Tenancy Act, 1885, as amended by the Bengal Tenancy (Amendment) Act, 1898, the Government of India by Notifications Nos. 321 S. R., and 322 S. R., dated the 19th January 1899, have made the following rules :—

(i) Fees chargeable on applications or petitions of objection referring to any entry made, or proposed to be made, in a draft record-of-rights prepared under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1898 (Bengal Act III of 1898) are remitted :

Provided that such applications or petitions are presented before the publication of such draft record under section 103A, sub-section (1), of the said Act.

- (ii) When a record-of-rights is being prepared under Chapter X of the said Act, and an application is made under section 105 thereof for a settlement of rent, such application shall bear a stamp of eight annas for each tenant making, or joining or joined in, the application.

NOTE.—The word “tenant” in clause (ii) means a tenancy, which may be held by several tenants as co-sharers, and a Court fee of eight annas is payable in respect of each such tenancy included in an application for settlement of rent under this section.

4. Appeals presented under section 104G (1) to a superior Revenue Authority and applications for revision presented under section 108 will bear a Court-fee of eight annas under Schedule II, 1 (b) of the Court Fees Act, if the superior Revenue Authority is of lower standing than a Commissioner of a Division. If the authority is a Commissioner of a Division or the Director of the Department of Land Records, or if an application for revision is made to the Board under section 104G (2), the fee will be one rupee under Schedule II, 1 (c) of the Court Fees Act.

Court-fees in appeals under sections 104G (1) and (2) and 108, Bengal Tenancy Act.

Process-fees.

5. Process-fees are not to be charged on general notices addressed to the raiyats and landlords in a body. The cost of issuing such notices forms part of the general expenses of survey and settlement, to be recovered under section 114 of the Act.

Process fees on general notices re-mitted.

6. Process fees are to be charged on special notices which it is found necessary to address to individuals in consequence of their failure to attend to general notices.

Fees to be charged on special notices.

7. But where it is necessary to issue a notice to a particular individual owing to the discovery of errors in the records, and not because of any neglect on his part, Process-fees should not be charged.

Except to correct errors.

8. Process-fees either paid in advance by, or recovered from, parties, are to be paid or expended in stamps, which will be attached to the applications for process or to the processes.

Process-fees to be credited to cost of settlement.

Scale of Process-Fees payable.

9. When a Survey and Settlement Officer is acting as a Revenue Officer under Rule 2, above, the scale of process-fees he may realise is given in Rule I, Chapter VII of the Tenancy Act Rules and Chapter VIII of the Board's Rules, 1896, which are summarised below :—

Scale of Process-fees.

- (a) For each executive revenue process, whether directed to one or more persons, where such persons reside in the same village—12 annas.
- (b) When process issues against persons in different villages, a separate fee must be charged for service in each village.
- (c) In addition to the above fee, the actual charge to be incurred, if it is necessary to travel by railway or boat or to cross ferries, must be levied. If the peon carries more than one process, the sum leviable as above is to be charged in equal shares upon all the processes carried.
- (d) If a peon is detained for more than 24 hours at the place of service on the request of the person at whose instance process was issued, such person must pay then and there demurrage at the rate of five annas per day.

10. (i) In all proceedings for the settlement of rents under Part III, Chapter X, and in all proceedings under section 106 of the Bengal Tenancy Act, the fees on processes issued by the Settlement Officer are subject to the rules framed by the High Court under section 2 of the Court Fees Act VII of 1870. The scale of the fees leviable under Act, VII of 1870 is given in pages 64 *et seq.* of the General Rules and

Sale of Process-
fees in Proceedings
under section 105
and suits under
section 106 of the
Bengal Tenancy
Act.

Circular Orders of the High Court (Civil), 1891, which are summarised below :—

	IN CASES WHEN THE SUBJECT-MATTER IS VALUED—		
	Above Rs. 1,000	Below Rs. 1,000 and above Rs. 50.	Below Rs. 50.
	1 Rs. A. P.	2 Rs. A. P.	3 Rs. A. P.
(1) In every case in which personal or substituted service is required on parties to the suit or on others when not more than four persons are to be served with the same documents, one fee.	2 0 0	1 0 0	0 8 0
(2) When such persons are more than four in number, the fee above-mentioned and an additional fee for every such person in excess of four.	0 8 0	0 4 0	0 4 0

NOTE.—In cases where the claim does not exceed Rs. 50 and personal or substituted service of any process is required on persons who are not parties, the fee is 4 annas.

In districts where travelling except by boat is impracticable, the fee may be enhanced by 25 per cent., according to the discretion of the Court.

(ii) Such fees are remitted when the proceedings are being held in camp in or near the village and service by process peons is unnecessary.

Mode of recovery.

11. In the case of special notices issued by Survey Officers or Revenue Officers under the Bengal Survey Act, or which correspond with those which the Collector has power to issue under the Survey Act, the fees for those notices are to be recovered under the Certificate Act, I (B. C.) of 1895. [In this connection see sec. 57 of Act V (B. C.) of 1875].

12. Process-fees levied under rule 6 of this Chapter can be recovered under the Certificate Act. The cost of processes issued by a Settlement Officer as a Revenue Court should, in the first instance, be paid by the party applying for the issue of the process, and if the suit is instituted on behalf of Government, then it should be paid by Government. Ultimately the cost in these cases should be added to the amount of the decree and recovered from the losing party under section 252 of the Civil Procedure Code.

Copying fees.

13. When copies of judicial decisions are applied for, the Rules of the High Court relating to Copying-fees should be followed. Copying-fees. See General Rules and Circulars of the High Court (Civil) 1891, pages 128-132. In other proceedings where applications are made for copies of documents to which the applicant is not entitled free of charge, the rules of the Board in section VIII of the Records Manual, 1895, page 24, should be adhered to.

14. Except for purposes of litigation and on payment of fees for certified copies, no copies of survey and settlement records are to be given in the field season, i. e. from the 1st November to 1st May. Such facilities as are possible are to be given by Survey and Settlement Officers to parties interested to inspect records under proper supervision, and take copies for themselves, when no interference to work is caused.

15. During the recess months copies, certified, or uncertified, as required are to be given on payment of Copying-fees subject to rule 13. If a document copied is in an incomplete state, it is to be marked with a stamp 'incomplete' and a date should be added to this stamp by the ministerial officer in charge of the copying office.

Exemption of Court-fees on copies of entries issued under sec. 103A (2).—" In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), the Governor-General in Council is pleased to remit the fees chargeable under the said Act, on certified copies of entries in record-of-rights furnished, in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such record-of-rights under section 103A (2) of that Act." (*vide* India Government Notification No. 4334—Exc., dated Simla, the 18th August, 1905.)

CHAPTER XI.

[NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY
RIGHTS, AND] RECORD OF PROPRIETORS'

PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to [lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government, or of any Local Authority or Railway Company, or to] a proprietor's private lands known in Bengal as *khamar*, *nij* or *nij-jot*, and in Behar as *zirat*, *nij*, *sir* or *kamat*, where any such land is held under a lease for a term of years or under a lease from year to year.

The whole of Chapter XI has been extended to the districts of Cuttack, Puri and Balasore (Not., August, 21st, 1906.)

The words in brackets in the heading to the Chapter and in this section were inserted by ss. 39 and 40, Act I, B. C., 1907.

Former law.—Section 6 of Act X of 1859 and of Act VIII, B. C. of 1869 similarly provided that rights of occupancy should not accrue in "*khamar*, *nij-jote* or *sir* land belonging to the proprietor of the estate or tenure and let by him on a lease for a term or year by year." Rights of occupancy could, therefore, be acquired in *nij-jote* land not so let (*Gaur Hari Singh v. Bihari Raut*, 3 B. L. R., App., 138 : 12 W. R., 278 ; *Ashraf v. Ram Kishor Ghosh*, 23 W. R., 288). But if *kamat* land was let for a term, the raiyat could not gain occupancy-rights merely because on the expiration of that term the land was tacitly let to him from year

to year for a long period (*Bhagwan Bhagat v. Jag Mohan Rai*, 20 W. R., 308). A landlord seeking to obtain an enhanced rate of rent on account of *nij-jote* land held by a tenant without a right of occupancy has no right to obtain a judicial assessment of the rent. His right is to make his own terms with the tenant or to turn him out. This he can do by serving the tenant with a reasonable notice to quit, unless he agrees to pay the rent required, and, if the tenant continues in occupation, he must be taken by implication to have agreed to pay the said rent (*Janu Mandar v. Brajo Singh*, 22 W. R., 548). The right to *nij-jote* lands necessarily passes on a sale to the auction-purchaser (*Jai Datta Jha v. Bayiram Singh*, 7 W. R., 40). A *zamindar* occupying his own lands as *nij-jote* cannot, when the *zamindari* passes into other hands, claim them on the ground that he is a raiyat with a right of occupancy (*Reed v. Srikrishna Singh*, 15 W. R., 430). A *zamindar* claiming certain land as *sirat* land, and failing to prove this plea, is yet entitled to a decree for possession, when the defendants are unable to prove that they have rights of occupancy, or even that they are tenants of the plaintiff (*Batai Ahir v. Bhagabtti Kuar*, 11 C. L. R., 476).

Present law.—The right to have *khamar* land belongs only to proprietors. Tenure-holders or *ijaradars* have, as such, no such right. Proprietors cannot now add to the area of their *khamar* land, and all land is to be presumed to be raiyati, (in which occupancy-rights can accrue) till the contrary is proved [sec. 120 (2) and (3)]. Tenants of *khamar* land have neither the rights of occupancy nor of non-occupancy raiyats. But with the exception of the provisions of Chaps. V and VI the other provisions of the Act, so far as they are applicable, will apply to them.

The object of this section is to exclude the proprietor's private lands from the operations of Chaps. V and VI provided the proprietor has taken the precaution indicated by the concluding words of the sections, *i. e.*, "when any such land is held under a lease for a term of years or under a lease from year to year." These words mean held by any one whether *tikkadar* or raiyat, to whom the proprietor has let it out, or by a raiyat under the *tikkadar*. A person brought upon the land by a lessee for a term under the proprietor, ceases to have any right in the land upon the expiry of his landlord's lease (*Sheo Nandan Rai v. Ajodh Rai*, 26 Calc., 546 : 3 C. W. N., 336). A tenant of *Kamat* land does not acquire a right of occupancy by holding it over after the expiry of his lease (*Syed Khalilur Rahman v. Rupan Mahton*, 12 C. W. N., 439).

In *Brahmanand Mahapatra v. Arjun Rout*, (1 C. L. J., 310), decided before the issue of Govt. notification of the 21st August 1906 extending the provisions of this Chapter to Orissa, it was held that secs. 20 and 21

having been extended to Orissa, and not sec. 116, occupancy-rights could be acquired in *nij-jole* lands. Since the issue of the Govt. notification above referred to this ruling no longer applies.

The acquisition of occupancy or non-occupancy rights by a tenant in an alleged *kamat* or *sirat* land cannot be prevented, unless the landlord proves that when the holding was first created, it was held under a lease for a term or from year to year. If it was not so initially let out, the execution of a *kabulyat* for a term by the tenant during the continuance of the tenancy, does not affect his status, or bar the application of the provisions of Chaps. V and VI (*Masudan Singh v. Gudar Nath Pandey*, 1 C. L. J., 456).

Onus.—In a suit by a landlord to eject a tenant on the ground that the land is his *sirat* land, the onus is on the landlord to prove that the land is *sirat* so as to bring it within the provisions of this section. The mere fact that in the lease the land is described as *khudkust* land would not shift the onus on the tenant (*Ajodya Prasad Singh v. Ram Golam Singh*, 13 C. W. N., 661). But if such a title is made out, it will then be for the tenant to prove his title in order to save himself from ejectment (*Herbert Manners v. Chatter Mahto*, 13 C. W. N., 664).

Chowkidari Chakran lands.—On resumption by Government and Settlement with the *samindar*, these lands are at the disposal of the *samindar* and he can deal with them either as *mal* or as *sirat* (*Jonab Ali v. Rakibuddin*, 1 C. L. J., 303 : 9 C. W. N., 571).

Object of alteration made in this section.—In the Notes on Clauses of the Bill of 1906, it was explained that the object of the alteration made in the heading of the Chapter and in sec. 116 was to bar the accrual of occupancy and non-occupancy rights in lands acquired under the Land Acquisition Act, 1894, and the Cantonments Act, 1889, so long as they are the property of the Government or the local body or Railway Company for which they were acquired. It often happens that such lands are temporarily not required by the Government or the local body or Railway Company, but under the present law if they are temporarily sub-let to agricultural tenants, occupancy and non-occupancy rights accrue, and these have to be re-acquired on payment of compensation, when the lands are again required for public purposes. This consideration often deters the Government, local bodies and Railway Companies from temporarily sub-letting such lands, where this course might be followed with advantage. In either case, whether the lands are temporarily sub-let (the occupancy and non-occupancy rights being subsequently re-acquired when the land is again required for public purposes), or whether the lands are allowed to remain unlet from fear of this contingency, an unnecessary waste of public money occurs, and it is justifiable on this account to apply these special provisions to such lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Government to order survey and record of proprietor's private lands.

Survey and Settlement by Government.—The Select Committee in their report on the Bengal Tenancy Act Bill observed as follows :

"In dealing with the difficult question of *khamar* or *zirat* land, we have provided two alternative methods of procedure :—(a) that of survey and registration of such land by a Revenue officer, by order of the Local Government ; (b) that of enquiry on the application of the individual landlord or tenant concerned. The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land." (Selection from Papers relating to the Bengal Tenancy Act, 1885, p. 239.)

Section 117 contains the provisions relating to the former of these methods of procedure and section 118, those relating to the latter.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue Officer to record private land on application of proprietor or tenant.

See note to preceding section. The rules framed by Government under this section are to be found in Chap. IV, rules 20-23, of the Govt. rules under this Act (see Appendix I).

119. When a Revenue-officer proceeds under either of the two last foregoing sections the provisions of [sections 103A, 103B, 106, 107, 108, 109 and 109A] shall apply.

Procedure for recording private land.

The words and figures in brackets were substituted for "sections 105 to 109, both inclusive," in this section by sec. 10 of the Amending Act of 1898, so as to bring the provisions of this section into consonance with those of Chapter X, as now amended.

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as khamar, zirat, sir, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and
- (b) cultivated land which is recognized by village usage as proprietor's khamar, zirat, sir, nij, nij-jot or kamat.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

[(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).]

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land,

the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

The new sub-section (2a) has been inserted by s. 41, Act I, B. C., 1907.

March 2nd, 1883, is the date on which leave to introduce the Bengal Tenancy Act Bill into Council was obtained. The mere fact of certain land having been taken as *zirat* by the defendant would not give to that fact any evidentiary value, when the letting was not before this date (*Sher Bahadur Shahu v. Muckenzie*, 7 C. W. N., 400). This case was distinguished from in the case of *Bhagtu Sing v. Raghu Nath Sahai* (9 C. L. J., 15 : 13 C. W. N., 135) in which it was held that a statement in a *kabulyat* that land was *zirat* was evidence *quantum valeat*. Indigo *zirat* lands, in the absence of evidence to shew that the lands were ever in the *khas* possession of the landlord or his ancestors, do not come within the definition of proprietor's private lands (*Dalglish v. Damodar Narain*, 8 C. L. J., 533.)

Onus.—With reference to the burden of proof as to land being *sir*, see *Hari Das v. Ghansham Narain* (6 All., 286), in which it is said that the onus lies on the person who alleges it to be *sir*.

When the plaintiff claimed possession of certain lands as *zirat* lands, and the Court holding that the plaintiff as regards most of the lands had failed to prove them to be *zirat*, it was decided that the plaintiff could claim a decree unless the defendants proved a tenancy entitling them to retain possession (*Narsing Narain Singh v. Dharam Thakur* 9 C. W. N., 144 ; *Baraik Kamal Sahi v. Lilhu Christian*, 8 C. L. J., 170).

Meaning of "any other evidence that may be produced."—“Under sub-section 2 of this section the law allows three matters to be taken into consideration in determining whether the land should be recorded as the proprietor's private land. The first is local custom ; the second is whether the land was, before the second day of March, 1883, specifically let as the proprietor's private land ; and the third is ‘any other evidence that may be produced.’ It seems to us that in enacting the sub-section, the legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the legislature, as asserted in the draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law ; and, therefore, the particular date and day of March, 1883, the date on which the draft Bill was published in the Gazette, and leave was obtained to introduce the Bill into the Council, was declared to be the latest date on which there should be free action on the part of the *samindars* to assert

their private rights so as to prevent the accrual of special tenant-rights. It was accordingly declared that it was a material point, in the consideration of such a matter as is now raised in appeal before us, whether the particular lands were before the 2nd day of March, 1883, specifically let, as the proprietor's private lands. From this we may take it that it was intended that regard should be had to any declarations made before that date by the landlord, and communicated to the tenants, in respect to the reservation of the proprietor's right over the land. In this view, we think that the following words in the sub-section 'any other evidence that may be produced' must mean any other evidence tending in the same direction, that may be produced to show the assertion of any title on the part of the proprietor, and communicated to the tenant before that date" (*Nilmani Chakravartti v. Baikantho Nath Bera*, 17 Calc., 466).

Object of new sub-section (2a).—The object of the new sub-section is explained in the Report of the Select Committee on the Bill of 1906, as follows :

"This clause in the main reasserts the principle already accepted in clause 24 ⁽¹⁾ that agreements or compromises made before a Revenue Officer should not be held to affect the rights of third parties. But in regard to the record of proprietor's private land, the majority of us consider it necessary to go further and to provide that the Revenue Officer shall not be bound to record land as proprietor's private land, because it has been declared to be so in a decree which has been obtained *ex-parte* or by collusion or fraud. The question whether land is proprietor's private land affects not merely the parties to a particular suit, *viz.*, the landlord and the tenant for the time being, but also all future occupants of the land, and it is necessary to safeguard their interests as far as possible. It would be easy for a landlord to obtain an *ex-parte* or collusive decree, declaring certain land to be proprietor's private land, by suing a non-existent or fictitious defendant who had no concern with the land. We consider, therefore, that in framing a record-of-rights regarding such land, the Revenue-officer should not be bound by decrees of the nature referred to, but should be required to satisfy himself by independent evidence as to the real nature of the land."

The provision relating to *ex-parte* decrees was omitted during the passage of the Bill through Council.

(1) See sec' 109 B, p. 371.

CHAPTER XII.⁽¹⁾

DISTRAINT.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

Cases in which an application for distraint may be made.

- (a) any crops or other products of the earth standing or ungathered on the holding ;
- (b) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead :

Provided that an application shall not be made under this section—

- (1) by a proprietor or manager as defined under VII (B. C.) of the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name

(1) By Act XX of 1885, the operation of this Chapter was postponed to February 1st, 1886. See note, p. 2.

and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act ; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed : or

(3) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

Law of distraint.—According to the Rent law Commissioners, distraint is “an offset of English law,” which was “originally introduced into this country by Regulation XXII of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter or of any other person) belonging to the tenants. This continued to be the law until 1859, when the power of distraint was limited to the produce of the land on account of which the rent is due.” (Rent Law Commissioners’ Report, vol. 1, p. 6). The Rent Commission proposed to abolish the law of distraint altogether ; but to this strong objections were urged and this Chapter is, therefore, the result of compromise. The Select Committee in their report on the Bill described the present procedure as follows :—“The modified power of distraint, which it is now proposed to allow, can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by, and be the property of, a sub-lessee of the tenant. The landlord cannot himself interfere with the produce to be distrained, but must apply to the Civil Court to distrain it. The Court after a brief examination of the case will depute an officer to distrain and sell the produce, and nothing will stay the sale, except the payment into Court of the amount of the demand. Any sum paid into Court will be retained for a month, with a view to the possibility of the owner of the distrained property claiming compensation as for a wrongful distraint, and on

the expiration of that period it will be paid to the landlord." (Selections from papers relating to the Bengal Tenancy Act, 1885, p. 203). Under proviso (3) to this section the produce belonging to a sub-lessee cannot be distrained, if the tenant has sub-let with the written consent of the landlord. The property distrained must be in the possession of the cultivator. So, under the old law it was held that a landlord could not distrain crops for arrears due, not from the tenant, but from another person not in possession, and who had not cultivated the crops (*Mohini Dasi v. Ram Kumar Karmokar*, W. R., Sp. No., 1864, Act X, 77).

What crops may be distrained.—"The term produce of land" (in sec. 115 of Act X of 1859) "is to be construed as equivalent to that which can be gathered and stored, crops of the nature of cereal, or grass or fruit-crops, and it does not apply to the trees from which the crops, if fruit-crops, are gathered. . . . 'Trees, shrubs and plants growing in a nursery ground cannot be distrained for rent'—Selwyn's N. P., 669.⁽¹⁾ The provisions of Act X appear to us also to refer only to such produce of the land as becomes ripe and is cut, gathered and stored" (*Sheo Prasad Tewari v. Molima Bibi*, 1 All. Rep., 53).

Who may distrain.—Joint landlords cannot distrain except collectively or through a common agent (sec. 188). This was also the law under Act X of 1859 (sec 112) and Act VIII, B. C., of 1869 (sec. 68). Applications or acts in, before, or to any Court or authority required or authorized by this Act to be done by a landlord may be made or done by an agent empowered in this behalf by a written authority under the hand of the landlord (sec. 117).

Form of application.

122. (1) Every application under the last foregoing section shall specify—

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification ;
- (b) the name of the tenant ;
- (c) the period in respect of which the arrear is claimed

(1) Selwyn's Law of Nisi Prius, Vol. I, p. 671

- (d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable ;
 - (e) the nature and approximate value of the produce to be distrained ;
 - (f) the place where it is to be found, or such other particulars as may suffice for its identification ; and
 - (g) if it is standing or ungathered, the time at which it is likely to be cut or gathered.
- (2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints.

A landlord can apply for distraint for the purpose of recovering the arrear of rent of the holding due for the preceding agricultural year, together with interest thereon at the rate of 12 p. c. per annum, but not for the recovery of damages, nor can he by an application apply for distraint for the rent of more than one holding (*Sheobarat Singh v. Naurangdeo Narain Singh*, 28 Calc., 364).

Court-fee duty on application.—Every application for distraint is subject to a Court-fee duty of eight annas. (Act VII of 1870, Sched. II, art. 1, cl. (b), para. 2.)

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

Procedure on receipt of application.

(2) the Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) Where a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

By an addition made by s. 16, Act I, B. C., 1907, to s. 69 of the Act it has been provided that an order made by a Collector under s. 69 for appraisement shall not prevent the execution of any order passed by the Court for the distraint of the tenants' crops ; see note, pp. 237, 238..

The High Court have passed the following rules with reference to the provisions of this section :—

“ All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-section (2), shall be on oath or affirmation.

A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint, and a copy of notice, under section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property.”

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce speci-

Execution of
order for dis-
traint.

fied therein, or such portion of that produce as it thinks fit ; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court :

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulters a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint, is made.

Service of demand and account.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

126. (1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to reap, &c., produce.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in charge of the distraining officer, or of some other person appointed by him in this behalf.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained, and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction :

Sale proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored, but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining

Place of sale.

officer is of opinion that it is likely to sell there to better advantage.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Manner of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorized to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Postponement of sale.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in

Payment of purchase-money

default of such payment the property shall be put up again and sold.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to be given to purchaser.

134. (1) From the proceeds of every sale of distrained property under this Chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

Proceeds of sale how to be applied.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

* Certain persons may not purchase.

Persons contravening the terms of this section are amenable to the provisions of sec. 185, Indian Penal Code.

136. (1) If at any time after a distraint has been made under this Chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property, where he is not the defaulter,

Procedure where demand is paid before the sale.

deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter, shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

137. (1) When an inferior tenant, on his property being lawfully distrained under this Chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to

Amount paid
by under-tenant
for his lessor
may be deduct-
ed from rent.

deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on, until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

138. When land is sub-let, and any conflict arises under this Chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

139. When any conflict arises between an order for distraint issued under this Chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

D distraint of property which is under attachment.

140. No appeal shall lie from any order passed by a Civil Court under this Chapter; but any person whose property is distrained on an application made under section 121, in any case in which such an application

Suit for compensation for wrongful distraint.

is not permitted by that section, may institute a suit against the applicant for the recovery of compensation.

Suits for compensation for wrongful distraint.—A suit for illegal distraint under this section is maintainable only on the ground that the distraint was made in violation of the provisions of section 121 of the Act. A tenant cannot deny the right of a registered proprietor to distrain and plead payment of rent to a third person whose name is not registered (*Hanuman Ahir v. Govindo Kuar*, 1 C. W. N., 318). But a landlord whose tenant's crops have been wrongfully distrained by a stranger may sue to set aside such wrongful distraint (*Haro Narain v. Sudha Krishto*, 4 Calc., 890: 4 C. L. R., 32). Before a tenant can obtain any decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained (*Ujan Dewan v. Prannath Mandal*, 8 W. R., 220). In a suit for recovery of damages for illegal distraint on the ground that the landlord had distrained the plaintiff's crop alleging his rent to be more than it really was, the onus is on the plaintiff to prove the annual rent payable by him (*Chandra Kant Mukhurji v. Hem Lal Mandal*, 1 C. W. N., 463). In a suit in which the plaintiff sued to recover the amount paid by him to obtain the release of his crops, which the defendant had illegally distrained as the crops of a third person, and in which the facts were found to be as alleged by the plaintiff, it was objected that the plaintiff's brother had an interest in the holdings. The plaintiff's brother was then added as a co-plaintiff, but after the period of limitation. A decree was accordingly given to the plaintiff for half the amount of his claim. On appeal to the High Court, it was urged (1) that under the provisions of sec. 140, the suit was not maintainable, because the distraint had been made on an application under sec. 121, which was permitted by that section; (2) that the whole of the claim ought to have been held to have been barred by limitation. The decree was, however, sustained. "We think there is nothing in sec. 140," it was said, "to exclude an action of this kind in a case like that before us in which the landlord is found to have abused his power of distraint by distraining the crops which belong to the tenant on the pretence that they belong to another person in collusion with himself. There has been an invasion of the rights of the tenant, for which he is entitled to a remedy, and if the case is not one of the kind contemplated by sec. 140, he is not deprived, by the provisions of that section of the ordinary right of action which any person who suffers from a tortious act has against the tort-feasor." On the point of limitation it was held that there was nothing to prevent the

plaintiff from suing alone for compensation for the illegal distraint, as far as he was injuriously affected by it, and in this view his claim, which was certainly brought in time, was not barred by the subsequent addition of his brother as a co-plaintiff (*Jagdeo Singh v. Padarath Ahir*, 25 Calc., 285).

Limitation.—The period of limitation for a suit for compensation is one year from the date of the wrongful seizure. Art. 28 or art. 29 and not art. 2, Sch. II of the Limitation Act (XV of 1877) applies (*Jagat-Jiban Nanda Rai v. Sarat Chandra Ghosh*, 7 C. W. N., 728). But see *Tarini Charan Basu v. Sambunath Pandey* (3 W. R., Act X, 139.)

The defendants under fraudulent and fictitious proceedings of distraint between a fictitious landlord and a fictitious tenant, seized standing crops belonging to the plaintiff: *held*, that a suit for damages for the crops so seized is governed by art. 36, Sch. II of the Limitation Act, the period accordingly being two years (*Hari Charan Fadikar v. Hari Kar*, 32 Calc., 459: 9 C. W. N., 376 sub-nom. *Mohesh Chandra Das v. Hari Kar*). In *Sripati Sarkar v. Hari Kar* (9 C. L. J., 109: 12 C. W. N., 1090), however, Mr. Justice Doss was of opinion that articles 39 and 49 of Act XV of 1877 were applicable.

The distraint is effected by the Act of the distraining officer when taking charge. Limitation runs from that date, and the period is one year under art. 28, Sched. II of the Limitation Act (*Kali Charan Shaha v. Kismat Mollah*, 11 C. W. N., lxxvi).

Jurisdiction of Small Cause Court when excluded—Under art. 35 (j), Sched. II of the Provincial Small Cause Court Act, IX of 1887), the jurisdiction of the Small Cause Court is excluded in suits “for compensation for illegal, improper or excessive distress or attachment.” See *Haider Ali v. Jafar Ali*, (1 Calc., 183). In an unreported case (*Madhu Sudan Das v. Annada Prasad De*, Rule No. 1349 of 1886), in which the plaintiff sued his landlord for damages in consequence of the superior landlord having distrained and sold the produce of six bighas of land, belonging to, and cultivated by, the plaintiff, the High Court, (Petheran, C. J., and Beverley, J.), on the 3rd December, 1886, passed the following judgment:—

“Order No. 1575 of 1886.—This rule was obtained to set aside the judgment of the Small Cause Court of Serampore on the ground that the Small Cause Court had no jurisdiction to try the suit. That is the only point which could be taken. The question which arises upon that is what the nature of the suit is. It is an action brought by a tenant against his landlord, joining several other persons as *pro forma* defendants, but, as a matter of fact, the judgment is against the landlord only to recover damages from him, because the crops of his tenant have been distrained and sold in satisfaction of the rent due by his landlord to the superior landlord

of the same property and which he had left unpaid. The first question which is sought to be argued is whether such a suit will lie, and, if it will, whether it is a suit on contract. I am clearly of opinion that the suit will lie, and at it is a suit on contract. When a person is in possession of land which he holds as a tenant to another and for which he is liable to pay rent, if he under-lets that land to a tenant, the law will imply a contract that he will pay his own rent and not leave the tenant's goods to be distrained to satisfy the rent which he ought to pay: if he does not do that, and the tenant's goods are seized and sold, he commits a breach of his contract to pay up his own rent, and therefore the tenant is entitled to sue him upon that contract and to recover damages. That is what has happened in this case, and therefore it seems to me that the case comes within sec. 6 of Act XI of 1865, which provides that all suits for damages shall be cognizable by the Small Cause Court. It is contended that they must be damages for breach of contract, but even upon that contention this is a suit for damages for breach of contract, and therefore comes not only within the provisions of the Small Cause Court Act, but within the admitted provisions of the Act. Under these circumstances, we think that the Small Cause Court had jurisdiction to try the case, and that this rule must be discharged."

A suit to establish a right to a standing crop is an ordinary civil suit and not one of a Small Cause Court nature (*Dakhyani Debia v. Doldgovind Chaudhri*, 21 Calc., 430). A suit to recover money paid to redeem crop which had been distrained for rents due from persons other than the plaintiffs, and also for damages sustained on account of the disraint is, so far as the claim relates to damages, a suit coming under clause (j) art. 35 of Sched. 11 of the Provincial Small Cause Court Act (IX of 1887) and is therefore not entirely a suit of the nature of a Small Cause suit, and a second appeal is not barred by sec. 586 in such a suit (*Dewan Rai v. Sundar Tewari*, 24 Calc., 163).

Landlord's liability for acts of agent—A landlord is not liable for compensation when his agent, who is not authorized in that behalf, makes an illegal distraint (*Ramjoy Mondal v. Kali Mohan Rai*, Marsh., 282). But he is liable if the agent acts under his authority, or he subsequently ratifies his acts (*Shama Sundari Debi v. Mallyat Mondal*, 11 W. R., 101).

Criminal penalties for illegal interference with produce.—Under sec. 186 of this Act any person who otherwise than in accordance with this Act (a) distrains or attempts to distrain the produce of a tenant's holding; (b) resists a distraint or forcibly or clandestinely removes distrained property; or (c) without the consent of the tenant prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding shall be deemed to have committed criminal trespass under sec. 447, Indian

Penal Code, and any one abetting him shall be deemed to have abetted the commission of criminal trespass.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application under this Chapter to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this Chapter to the Civil Court :

Power for Local Government to authorize distraint in certain cases.

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this Chapter.

Power for High Court to make rules.

High Court Rules.—The rules framed by the High Court under the provisions of this section will be found in Appendix III.

CHAPTER XIII.

JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the Governor-General in Council, make rules consistent with this Act, declaring that any portions of the Code of the Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV of 1882.

Application of Civil Procedure Code.—No rules have been made by the High Court under this section declaring any portions of the Civil Procedure Code inapplicable to suits between landlord and tenant. But under sec. 148 (a) considerable portions of the Civil Procedure Code do not apply to suits for the recovery of rent.

Suits for arrears of rent must include all rent due at the time of institution.—Under sec. 43 of Act XIV of 1882 a plaintiff is now bound to sue for all rent due at the time of the institution of his suit. He cannot sue for the rent of one year, and then sue later on for the arrears of earlier years, (see illustration to sec. 43), or for the arrears of later years, if the rent of these years was due at the time of the institution of his suit (*Tarak Chandra Mukhurji v. Panchu Mohini Debye*, 6 Calc., 791 : 8 C. L. R., 297 ; *Madhu Prakash Singh v. Murli Manohar*, 5 All., 406 ; *Narain Kumari v. Raghu Mahapatro*, 12 Calc., 50 ; *Alagu v. Abdula*, 8 Mad., 147 ; *Balaji Sitaram Naik Salgavkar v. Bhikaji Soyare Prabhu Kanolekar*, 8 Bom., 164 ; *Chandi Charan Tarasdar v. Jogendro Chandra Chaudhri*, 1 C. W. N.,

cxx; *Ashanulla Khan v. Tirthabashini*, 22 Calc., 691. See also *Shoe Shankar Sahai v. Hridai Narain*, 9 Calc., 143; and *Madan Mohan Lal v. Sheo Shankar Sahai*, 12 Calc., 482). The two last cited reports relate to the same case, in which damages were claimed. The High Court followed the principle of *Tarak Chandra Mukhurji v. Panchu Mohini Debya*, and on appeal to the Privy Council its decision was affirmed. But the dismissal of a suit for enhancement of rent is under sec. 43, C. P. C., no bar to a subsequent suit for rent at the rate originally fixed (*Sadrudin Ahmad v. Beni Madhub Rai*, 15 Calc., 145. See also *Khedarunnissa v. Budhi*, 13 W. R., 317 and *Sura Sundari Debi v. Ghulam Ali*, 19 W. R., 142; 15 B. L. R., 125, note). The case of *Sadarudin Ahmad v. Beni Madhub Rai*, is a full Bench one and overrules *Kanak Chandra Mukurji v. Guru Das Biswas*, (9 Calc., 919; 12 C. L. R., 599).

Deposit of rent under s. 61 must be treated as equivalent to part payment. Notice of deposit under s. 63 does not give a fresh and independent cause of action in respect of the balance then due. In a suit for such balance, the landlord is obliged under s. 43, C. P. C., to include a claim for all arrears due at the time of institution (*Atul Krishna Ghosh v. Nripendra Narain Ghosh*, 1 C. L. J., 114).

A, a landlord took proceedings against a tenant B for recovery of the rent of the year 1305 by appraisalment of the crops under ss. 69 and 70, and realised his dues by execution. B then sued to set aside the proceedings as being without jurisdiction and obtained a decree for restitution. Meanwhile, A had sued for and obtained a decree for 1306. After being compelled to make restitution, A sued for the rents of 1305, and 1307: held, that the claim for 1305 was barred, as it had not been included in the claim for 1306 (*Abdulla v. Har Kishen Singh*, 2 C. L. J., 490).

Statutory disabilities in suits for rent.—As already pointed out in the note to sec. 60, pp. 208-209, proprietors, managers and mortgagees of estates or revenue-free properties cannot under sec. 78, Act VII, B. C., of 1876 recover rent due to them, unless their names have been registered under the Act, if objection be raised to their claims on this ground. (1) Under sec. 19, Act IX of 1880, B. C., (The Cess Act) holders of estates or tenures in respect of which notices of valuation or re-valuation have been issued, are absolutely precluded from suing for or recovering rent for any land or tenure situate in states or tenures in respect of which no returns have been lodged, and *bhaoli* land must be included in such returns (*Jagmohun Tewari v. Finch*, 9 Calc., 62; 11 C. L. R., 100). Further, under sec. 20 of the Act, every holder of an estate or tenure in respect of which a return has been made under the Cess Act is precluded from suing for or recovering (a) any rent whatsoever for any land, holding, or

(1) This is subject to the condition of any written contract between the parties (sec. 81, Act VII, B. C., of 1876).

tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure, for which the rent is claimed, was created subsequently to the lodging of such return; and (b) rent at a higher rate than is mentioned in such return for any land, tenure, or holding included in such return, unless it be proved that the rent of such land has been lawfully enhanced subsequently to the lodging of such return.

But it is not required that the whole of the rent which is payable by a particular tenant should be entered against that person's name. Section 20 (a) only requires that all the lands for which rent is payable should be entered in the return (*Gauri Saran Mahto v. Mahamed Latif Hussain*, 4 C. L. J., 827).

Before holders of states or tenures can recover road-cess which is included in the term "rent" in sections 53 to 68 and 72 to 75 [sec. 3 (5)], for rent-free lands, they may be called on to prove the issue of the notices of the preparation of the valuation rolls, no presumption of their due service arising in their favour (*Ahsanullah Khan v. Trilochan Bagchi*, 13 Calc., 197; *Rash Bihari Mukhurji v. Pitambari Chaudhrani*, 15 Calc., 237). But this rule does not apply to the recovery of road-cess for rent-paying lands (*Bhagwati Kuari Chaudhurani v. Chatarpat Singh* 2 C. W. N., 406).

In a suit for enhancing the rent payable by certain fractional shareholders in a *taluk*, the *zamindar* put in as evidence several road-cess returns which had been filed on behalf of another fractional shareholder and which showed that the tenants were receiving from sub-tenants considerably higher rent than they were paying to the *zamindar*: held, that these returns, though not conclusive, yet *prima facie* showed that the existing rent was not fair and equitable and that the onus lay on the tenants to rebut the presumption raised by the returns by producing the collection papers (*Hem Chandra Chaudhuri v. Kali Prasanna Chaudhuri*, 8 C. W. N., 1).

Karta of a Hindu Joint family.—When rent is due to the members of joint Hindu family the *Karta* alone cannot maintain a suit for rent without joining the other members as plaintiffs or as defendants except when the tenant has dealt with the *Karta* as the sole landlord. (*Mir Tapurah Hossein v. Gopi Narayan*, 7 C. L. J., 251).

Succession Certificate Act.—Under section 4 (2) of the Succession Certificate Act (VII of 1889) arrears of rent payable in respect of land used for agricultural purposes which accrued in the time of a deceased landlord may be sued for without a certificate having been taken out under the provisions of that Act. See note p. 77.

Interpleader suit.—Under O. XXXV. r. 5, Civil Procedure Code, tenants cannot sue their landlords for the purpose of compelling them to interplead with any persons other than persons making claim through such landlords. A tenant therefore cannot bring a suit to have it determined which of two defendants, both of whom claim rent from him, is his landlord (*Koilash Chandra Dutta v. Goluk Chandra Poddar*, 2 C. W. N., 61).

Failure of plaintiff to prove alleged rate of rent.—When in a suit for arrears of rent at certain alleged rates, the plaintiff fails to prove the rates of rent alleged by him, it is not the duty of the Court to ascertain what were the proper rates payable, unless asked to do so (*Rash Dhari Gope v. Khakon Singh*, 24 Calc., 433.) In this case it was pointed out that *Pannu Singh v. Nirghin Singh*, (7 Calc., 298) does not really lay down the contrary, though according to the head-note of the report it does.

Denial of landlord's title.—No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immoveable property; and no person who came upon immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given (Sec. 116, Act I of 1872; *Jai Narain Basu v. Kadambini Dasi*, 7 B. L. R., 723, note; *Bhairo Singh v. Lilanand Singh*, 21 W. R., 153; *Sonamani Bibi v. Dhan Munshi*, 1 C. W. N., xxiv). Although a tenant may not, during the continuance of the tenancy, deny that his landlord had a title at the beginning of such tenancy, he may show that such title has expired (*Ammu v. Ramakishna Sastri*, 2 Mad., 226; *Burn & Co v. Bisho Mayi Dasi*, 14 W. R., 85; *Mohan Mahtu v. Shamsul Hoda*, 21 W. R., 5), as by a sale to him by the landlord, (*Vedu v. Nilkanth*, 22 Bom., 428), or has been defeated by a title paramount (*Gopanand Jha v. Gobind Prasad*, 12 W. R., 109). The words "at the beginning of the tenancy" in sec. 116, Act I of 1872, only apply to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession; consequently, when A, a raiyat, being in possession of a certain holding, executed a *kabulyat* regarding this holding in favour of B (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to B thereunder, it was held that A was not estopped by sec. 116 of the Evidence Act from disputing B's title (*Lal Mahomed v. Kalonas*, 11 Calc., 519; *Brajanath Chaudhri v. Lal Miah Manipuri*, 14

W. R., 391; *Jesingbhai v. Hataji*, 4 Bom., 79). But when a tenant denied execution of a *kabulyat* sued on by the plaintiff, pleaded that it was forged and denied payment of rent under it, and failed to establish these pleas, it was held that he was not entitled to prove that the plaintiff was not his landlord, though he had not been inducted into the land by him (*Ketu Das v. Surendra Nath Sinha*, 7 C. W. N., 596). One who pays rent to another, believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that other (*Beni Madhub Ghosh v. Thakurdas Mandal*, B. L. R., F. B., 588: 6 W. R., Act X, 71; *Gauri Das v. Jagarnath Rai*, 7 W. R., 25).

A tenant is not prevented from questioning the title of the alleged assignee of his admitted landlord (*Tilleshari Kuar v. Asmedh Kuar*, 24 W. R., 101). A executed a *kabulyat* for a term of years to B, as *zamindar*. B gave a *putni* of the *zamindari* to C. C instituted a suit for arrears of rent under the lease against A, the lessee. A admitted the execution of the lease to B, but denied that B was his real lessor and beneficially entitled to the rent, and alleged that he was only a *benamidar* for a third party. It was held that A was competent to deny his lessor's title as stated in the lease, and by parol evidence to prove a different title to that recited in it (*Donselle v. Kedar Nath Chakrabarti*, 7 B. L. R., 720: 16 W. R., 186: 20 W. R., 352; *Indrabatti Koer v. Mahbub Ali* 24 W. R. 44). A mere *benamidar* cannot maintain a suit for ejectment, having neither title to, nor possession of, the property (*Issar Chandra Dutta v. Gopal Chandra Das*, 25 Calc., 91).

Possession of a tenant not adverse to landlord.—The possession of a tenant is not adverse to his landlord (*Shristidhar Mazumdar v. Kali Kant*, 1 W. R., 171; *Watson v. Sarat Sundari Debi*, 7 W. R., 395; *Davis v. Abdul Hamid*, 8 W. R., 55; *Grish Chandra Rai v. Bhagwan Chandra Rai*, 13 W. R., 191; *Lakhu Khan v. Wise*, 18 W. R., 443; *Duli Chand v. Sham Bihari Singh*, 24 W. R., 113; *Haradhan Rai v. Haladhar Chandra Chaudhri*, 25 W. R., 56; *Raj Kishor Sarma Chakravarti v. Girija Kant Lahiri*, 25 W. R., 66), as long as there is no dispute or conflicting claim (*Ram Chandra Singh v. Madho Kumari*, 12 Calc., 484). So long as the relation of landlord and tenant exists, the mere omission of the tenant to pay his rent does not constitute an adverse possession so as to make limitation applicable (*Trailokhya Tarini Dasi v. Mohima Chandra Matak*, 7 W. R., 400; *Rango Lal Mandal v. Abdul Ghaffur*, 4 Calc., 314: 3 C. L. R., 119; *Poresk Nath Rai v. Kashi Chandra Talukdar*, 4 Calc., 661; *Dadoba v. Krishna*, 7 Bom., 34; *Tutia v. Shadasiv*, 7 Bom., 40; *Tiruchurna Perumal Nadan v. Sanguvin*, 3 Mad., 118; *Premasukh Das v. Bhupia*, 2 All., 517). See

also notes, p. 26. When A holds under B's tenants, his possession is not adverse to B (*Bangsraj Bhukta v. Megh Lal Puri*, 20 W. R., 398). The mere non-payment of rent does not constitute an adverse holding, but if a tenant openly sets up an adverse title and holds adversely, limitation runs (*Haronath Rai v. Jogendra Chandra Rai*, 6 W. R., 218), as when an intermediate holder sets up a *mukarari* title (*Najimudin Hossein v. Lloyd*, 15 W. R., 231), from the time when the landlord had notice of the adverse title so set up (*Gaura Kumari v. Bengal Coal Co.*, 13 W. R., 129 : 12 B. L. R., 282 ; *Gaura Kumari v. Saru Kumari*, 19 W. R., 252 ; *Pitambar v. Nilmani Singh Deo*, 3 Calc., 793 ; *Gopalrao v. Mahadevrao* 21 Bom, 394 ; *Dalmar Puri v. Bipin Behari Mitra*, 18 Calc., 526) ; and a trespasser, merely by alleging tenancy in his written statement, does not preclude himself from setting up the defence of the law of limitation (*Dina Mani Debi v. Durga Prasad Mazumdar*, 21 W. R., 70 : 12 B. L. R., 274). A wife during the prolonged absence of her husband, who was erroneously supposed to be dead, acting in excess of the limited powers of a wife in possession of her absent husband's property made a *maurasi* grant of a portion of her husband's estate. The grantee entered into and remained in possession for upwards of twelve years. It was held that the position of the grantee was not that of a lessee and that his possession (although in its inception an act of trespass against the husband), having continued for upwards of twelve years, had perfected his title to the lands (*Bijai Chandra Banurji v. Kali Prasanno Mukhurji*, 4 Calc., 327). It is open to a defendant to plead tenancy and limitation in the alternative (*Keamuddin v. Hari Mohan Mandal*, 7 C. W. N., 294). A tenant cannot acquire an easement by prescription in other lands of his lessor (*Mani Chandra Chakravartti v. Baikantha Nath Biswas*, 9 C. W. N., 856). When there is a current lease, and the tenant is dispossessed by a third party, time does not commence to run against the landlord until the expiration of the lease. But when the lease has expired and the tenant is holding over with the landlord's consent, and the possession of such third party is adequate in continuity, in publicity and in extent so as to show that it is possession adverse to the landlord, the latter is not precluded from determining the tenancy and suing the trespasser in ejectment and his right to sue will be barred after 12 years of such possession (*Kishwar Nath Sahi v. Kali Sankar Sahai*, 10 C. W. N., 343). See also note, pp. 185, 186.

The landlord need sue only his recognized tenant.—Under the former law, the landlord was only bound to sue his registered tenant for the rent (*Hari Charan Basu v. Meherunissa*, 7 W. R., 318 ; *Forbes v. Pratap Singh*, 7 W. R., 409 ; *Sadhan Chandra Basu v. Guru Charan Basu*, 15 W. R., 99 ; *Sadai Purira v. Baistab Purira*, 15 W. R.,

261 ; *Dwarka Nath Mittra v. Nobanga Manjari Dasi*, 7 C. L. R., 233 ; *Bichitra Nanda Rai v. Bihari Lal*, 5 C. L. J., 89). Mere cognizance or supposed cognizance by the landlord of the purchase of a tenure is not sufficient to cure the defect of non-registration (*Sarkies v. Kali Kumar Rai*, W. R., Sp. No., 1864, Act., X, 98). But if he has recognized a new tenant by accepting rent from him (*Nabo Kumar Ghosh v. Krishna Chandra Banurji*, W. R., Sp. No., 1864, Act X, 112 ; *Mritanjai Sarkar v. Gopal Chandra Sarkar*, 10 W. R., 466 : 2 B. L. R., A. C., 131 ; *Bharat Rai v. Ganga Narain Mahapatro*, 14 W. R., 211 ; *Dhanpat Singh Rai v. Vilait Ali*, 15 W. R., 211 : *Anand Moyi Dasi v. Mohendro Narain Das*, 15 W. R., 264 ; *Allender v. Dwarkanath Rai*, 15 W. R., 321), that is, not in the name of the old tenant (*Rasomai Purkhait v. Srinath Maira*, 7 C. W. N., 133) or in other ways (*Miah Jan v. Karuna Mayi Debi*, 8 B. L. R., A. C., 1), as by allowing sums paid into the Collectorate to be carried to his credit (*Ram Govind Rai v. Dashubhoja Debi*, 18 W. R., 195), or by selling his raiyat's right and interest in the tenure (*Prasanno Mayi Dasi v. Bhobo Tarini Dasi*, 10 W. R., 494), he cannot resile and sue his old tenant. He can recognise him to what extent he pleases (*Gonesh Das v. Ram Pratab Singh*, 5 C. W. N., clxxv). If a holding has been let to more than one raiyat, they must all be sued (*Rup Narain Singh v. Jaggo Singh*, 10 W. R., 304). The unregistered transferee of a transferable tenure cannot be treated by the landlord as a trespasser, and is entitled as against the landlord who has evicted him, to be restored to *khas* possession (*Nobin Krishna Mukhurji v. Shib Prasad Patak* 8 W. R., 96). Under the present law, though there is now no registration in the landlord's *serishtuh*, a landlord is only bound to sue his recognized tenant and is not bound to recognize transferees of tenures and raiyati holdings at fixed rates, unless the procedure prescribed by secs. 12 to 18 has been strictly complied with, or of occupancy-holdings, transferable by custom or local usage unless notice of the transfers has been given as provided in section 73. When a landlord has obtained a decree for rent against his registered tenant, a transferee of the holding, who acquired an interest in it after the decree, cannot maintain a suit to set aside the decree, except on the ground of fraud, nor is he entitled to a refund of the money paid in satisfaction of the decree (*Jadu Nandan Tewari v. Tirbhuban Tewari*, 1 C. W. N., clxiv).

Though the landlord sues only the recorded tenant for the rent, this does not relieve the unrecorded tenants of their equitable liability of paying their share of the rent to the recorded tenant who has been obliged to pay the whole. Even when one of the unrecorded co-tenants has sold away his interest before the date of suit, this will not relieve him of his liability, even when he has derived no advantage from the payment made if he was a co-tenant at the time when the liability for

the rent arose (*Govinda Chandra Chakravartti v. Basant Kumar Chakravartti*, 3 C. W. N., 384).

A landlord cannot sue his tenants for the rent of a holding, and also the *zarpeshgi-dars* from the tenants for the same rent on the ground that the *zarpeshgi-dars* are in occupation of a portion of the holding (*Rama Das v. Thakur Das*, 1 C. L. J., 136).

Because a person is the sole recorded tenant in the landlord's *serishtā*, he is not therefore alone entitled to sue third parties for damages done to the tenure, if other persons are also interested and have a right to the same (*Iskwar Chandra Santra v. Satish Chandra Giri*, 30 Calc., 207 : 7 C. W. N., 126).

The onus of proof that rent decrees have been obtained against the sole recorded tenant is on the plaintiff landlord (*Baikantho Nath Rai v. Debendra Nath Sahi*, 11 C. W. N., 676).

The landlord may sue the real tenant.—A decree for arrears of rent may be given against the real lessees in possession, although no previous realisation of rent directly from them is established, and no written agreement is shewn to have been executed by them in their own names, another party being the ostensible holder of the lease and not denying liability (*Jadunath Pal v. Prosanna Nath Datta*, 9 W. R., 71 ; *Bipin Bihari Chaudhri v. Ram Chandra Rai*, 14 W. R., 12 : 5 B. L. R., 234 ; *Ram Tarak Ghosh v. Biressar Banurji*, 5 W. R., Act X, 32 ; *Jirabatunnissa v. Ram Chandra Das*, 6 W. R., Act X, 36). A mortgagee in possession may be sued for the rent (*Macnaghten v. Bhikari Singh*, 2 C. L. R., 323). If a *zamindar* sues an agent for rent due from an estate, this is no bar to the *zamindar's* afterwards suing the principal for rent, subsequently accrued due. But he cannot in the same suit sue both the principal and the agent : he must elect which of them he will proceed against (*Prasanna Kumar Pal v. Kailash Chandra Pal*, 8 W. R., 428). A landlord cannot hold both the nominal and the real lessees liable for rent, but must make his election (*Kamyaab v. Umda Begum*, W. R., Sp. No., 1864, Act X, 88 ; *Hira Lal Bakshi v. Raj Kishor Masumdar*, W. R., Sp. No. F. B., 58).

No decree for arrears of rent can be made against any person other than the actual tenant, or some one who may be security for him. Consequently, there can be no decree for arrears of rent against persons holding subordinate interests in a *jagir* tenure, which have been created by the *jagirdar* (*Pratap Udai Nath v. Pradhan Mokunda Singh*, 25 Calc., 399 : 2 C. W. N., 96).

Where the persons liable to pay rent are *Mutwallis* it is essential that all the *Mutwallis* should be brought before the court as defendants,

in as much as *Mutwallis* stand in the position of trustees. (*Abdul Rab Choudhry v. Eggar*, 35 Calc., 182.)

Admissions by co-tenants.—An admission by one raiyat as to the rate at which he holds is not evidence to prove the rate at which another raiyat holds (*Narahari Mohant v. Naraini Dasi*, W. R., Sp. No., F. B., 23). When two persons were sued for rent as joint tenants, and one of them admitted the correctness of the plaintiff's claim, it was held that the admission of the one could not bind the other, and that as they had been sued on the allegation that they held the holding jointly, a separate decree for half the amount admitted could not be made against the tenant who had made the admission (*Chandareswar Narain Prasad v. Chuni Ahir*, 9 C. L. R., 359). The admission of a co-sharer tenant as to a particular person being the landlord of the holding is no evidence against the other co-tenants (*Kali Kishor Chaudhri v. Gopi Mohan Rai*, 1 C. W. N., cliv). But in a suit between a *zamindar* and his *ijaradars* for rent, a person who was one of several *jotedars* in the *mahal* was called as a witness for the *zamindar*, and admitted the fact that an arrangement existed whereby he and his *co-jotedars* had agreed to pay rent to the *zamindar* direct. This suit was decided in favour of the *zamindar*. The *ijaradars* then brought a suit against the *jotedars*, amongst whom was the witness above-mentioned, to recover the sum which the *jotedars* ought to have paid to the *zamindar* direct, and which the *ijaradars* had been decreed to pay. The *jotedars* disclaimed all liability to pay rent to the *ijaradars*. In this suit the evidence given by the *jotedar* in the *zamindar's* suit was received on behalf of the plaintiff against all the defendants and it was held that the evidence was admissible (*Kausulliah Sundari Dasi v. Mukta Sundari Dasi*, 11 Calc., 588). In this case it was said that "where there are several co-contractors or persons engaged in one common business or dealing, a statement made by one of them with reference to any transaction which forms part of their joint business, has always been held admissible as evidence against the others." A decree obtained against one co-tenant, who was the registered tenant, and who was allowed by the other to represent him in the tenancy, the *dakhilas* being issued in his name only, was held admissible against the other tenant on the ground of equitable estoppel (*Mati Lal v. Nripendra Nath Rai*, 2 C. W. N., 172). Where one of several joint tenants has executed a *kabulyat* for the rent of the entire tenure, and the other tenants have not acquiesced in it and are not bound by it, the tenant executing the *kabulyat* is not liable for any rent in excess of his share (*Ram Taran Chaturji v. Asmatullah*, 6 C. W. N., 111). In a suit for ejectment from certain homestead land, a written statement filed on behalf of some co-sharer defendants was held admissible as

evidence against other co-sharer defendants (*Girija Prasanna Mukherji v. Jadu Nath Karmokar* 10 C. W. N., cxxxvi). But a decree obtained by a co-sharer landlord is not admissible as evidence as to the rate of rent in a suit brought by another co-sharer (*Abdul Ali v. Raj Chandra Das*, 10 C. W. N., 1084).

Instalment decrees.—*obiter*, Section 210 C. P. C., (O. XX. r. 11) does not apply to rent decrees and the Court cannot pass an instalment decree (*Shibnarayan v. Baikantha Nath*, 11 C. W. N., ccxx).

Set-off.—In a suit for arrears of rent a claim for abatement may be made by way of set-off, and it is competent to the Court to adjudicate on such a plea. See notes to sections 38 and 52, pp. 149 and 190. A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set-off against sums due for rent (*Watson & Co. v. Braja Sundari Debi*, 16 W.R., 225). In a suit brought by one of the co-sharers in an estate for money alleged to be due in respect of her share as arrears of rent, where the claim was admitted, it was held that the defendant was not entitled to set-off, under sec. 121 Act VIII of 1859, the plaintiff's share of the Government revenue of the estate which had been paid by the defendant for the period for which the arrears of rent were alleged to be due. It was said that, to admit of a set-off, there must be such a connection between the claim and counter-claim that the truth and completeness of the one cannot be judged of or measured without reference to, and a consideration of, the other, and that in this case there was no such connection between the claim of the plaintiff and the counter-claim of the defendant, as would entitle the defendant, as a matter of equity, apart from legislative enactment, to a set-off (*Hossaina Bibi v. Smith*, 22 W. R., 15 : 13 B. L. R., 440). In a suit by a *samindar* for arrears of rent the defendant alleged that his tenure had been placed under the management of the Collector, and had so remained for a number of years, and that the Collector, from money realized by him as manager, had, in addition to satisfying all other claims of the plaintiff paid the rents accruing not only during the period of his management, but up to, and inclusive of, the year, the arrears of rent for which were claimed in the suit. The lower Court refused to consider the defendant's plea, on the ground that it was in the nature of a set-off, and that not being a debt due from the plaintiff to the defendant, it was not such a set-off as could be allowed by the Court. It was, however, held that the plaintiff's plea was a plea of payment merely and not in the nature of set-off (*Kunja Bihari Singh v. Nil Mani Singh*, 4 C. L. R., 296). A *durpatnidar* has been held entitled to set-off against the *patni* rent sums paid by him to save the *patni* from sale under Reg. VIII of 1819 (*Nubo Gopal Sarkar v. Srinath Bandopadhyaya*, 8 Calc., 877 ; *Lalit*

Mohun Saha v. Srinibas Sen, 13 Calc., 331). In a suit by a *zamindar* against the wife of the Nawab Nazim of Bengal for the rent of a *patni* for the years 1284 and 1285, it appeared that the defendant had paid the revenue for 1284 to Government, and it was contended that the moneys paid for revenue were payments made to the plaintiff so as to entitle him under secs. 59 and 61 of the Contract Act to appropriate them in discharge of the rent of 1283, which was barred by limitation. But it was held that these payments were properly the subject of set-off as money paid to the use of the plaintiff, and that they could not be appropriated under the Contract Act to the rent of 1283 (*Rukmini Ballabh Rai v. Jamunia Begum*, 9 Calc., 914 : 12 C. L. R., 534). Though the provisions of sec. 111, C. P. C., allow only of an ascertained sum being set-off against the plaintiff's claim in a suit for the recovery of money, they do not take away from parties any right to set-off, legal or equitable, which they would have independently of that Code (*Bhagbat Panda v. Bamdeb Panda*, 11 Calc., 557), provided the cross-demand raised by the defence arises out of the same transaction as, and is connected in its nature with, the plaintiff's suit (*Chisholm v. Gopal Chandra Sarma*, 16 Calc., 711).

A defendant is entitled to set-off the amount of a decree obtained by him against the plaintiff, although the decree has not been executed (*Bharat Prasad Sahi v. Rameshwar Koer*, 30 Calc., 1066), but not a decree for costs obtained by him in a suit brought against him by the *benamidar* of his landlord and in which his landlord was a *pro forma* defendant (*Tilak Chandra Rai v. Jasoda Kumar Rai*, 11 C. W. N., 215). Where the defendant in a suit for rent claimed a deduction for road cess payable by the plaintiff, and which had been paid by him, held that the payment was not a part payment of the rents sued for, but an antecedent debt and was in the nature of a set-off, and Court fees must be paid for the same (*Guise v. Ananta Ram Rathi*, 10 C. W. N., 199). But a set-off which might and ought to have been pleaded in a previous rent suit can not be pleaded in a suit for the rent of a subsequent period, being barred by the principle of *res judicata* (*Jamadar Sing v. Sherazuddin Ahmad*, 35 Calc., 979).

Burden of Proof.—Under sec. 109, Act I of 1872, when the question is whether persons are landlord and tenant and it has been shown that they have been acting as such, the burden of proving that they have ceased to stand to each other in those relations respectively is on the person who affirms it. (See *Mohan Mahto v. Shamsul Huda*, 21 W. R., 5 ; *Rango Lal Mandal v. Abdul Ghaffur*, 4 Calc., 314 : 3 C. L. R., 119 ; *Parbati Dasi v. Ram Chand Bhattacharji*, 3 C. L. R., 576 ; and *Bama Charan Chaudhuri v. Administrator General*, 6 C. L. J., 72). When it has not been so shown, and no tenancy is admitted, the burden of

proving an alleged tenancy is on the party asserting it to exist (*Ram Mani v. Alimudin*, 20 W. R., 374 ; *Batai Ahir v. Bhagabatti Kuar*, 11 C. L. R., 476). The onus of proving the proper rate is upon the plaintiff, and not upon the defendant (*Samira Khatun v. Gopal Lal Tagore*, 1 W. R., 58 ; *Khola Mandal v. Piru Sarkar*, 6 W. R., Act X, 18 ; *Ashraf v. Ram Kishor Ghosh*, 23 W. R., 288). The fact that a tenant some time ago gave a *kabulyat* for a limited period at a particular rate of rent is not sufficient to throw upon the defendant the onus of proving what the present rent is, without any evidence on the part of the landlord that the rent specified in the *kabulyat* had ever been realized from him (*Makunda Chandra Sarma v. Arpan Ali*, 2 C. W. N., 47). But if the tenant pleads that a *kabulyat* was taken from him by coercion or undue influence the tenant must prove his special plea. It cannot be laid down generally that a landlord in the *mosussil* is in a position to dominate the will of a tenant within the meaning of sec. 16 of the contract Act (*Raja Promoda Nath v. Kino Molla*, 13 C. W. N., 167 : 8 C. L. J., 135). In a suit to recover arrears of rent at enhanced rates, the onus of proving both the quantity and the rates is upon the plaintiff and not upon the defendant (*Ghulam Ali v. Gopal Lal Tagore*, 1 W. R., 56). It lies on the plaintiff to make out distinctly the different grounds on which he rests his right to enhance, viz., excess of area, increase of productiveness apart from the tenant's agency, and increase in the value of produce (*Ghulam Ali v. Gopal Lal Thakur* 9 W. R., 65 ; *Pulin Bihari Sen v. Watson & Co.*, 9 W. R., 190 ; *Doma Rai v. Melon*, 20 W. R., 416), and he must prove that the present rate is not fair and equitable (*Hills v. Jendar Mandal*, 1 W. R., 3). In a suit to recover arrears of rent from the defendants, who, as *thikadars* of the plaintiff's share in a certain *mauzah*, had been in possession from 1262 to 1281 without having paid any rent, the plaintiff, who claimed a *bhaoli* rent at the rate of 9 annas of the crop, proved that in the *mauzah* in question the raiyats paid rent at that rate, and it was held that under the particular circumstances the onus was on the defendants, who alleged that the proper rate was 8 annas, to prove their allegation (*Lochan Chaudhri v. Anup Singh*, 8 C. L. R., 426). In a suit for enhancement where the defendant replies that the land in question does not belong to the plaintiff's estate, the onus is on the plaintiff (who seeks to dispute the previously existing arrangement) to prove his right to do so (*Mahomed Ali v. Radha Raman Mandal*, 4 W. R., Act X, 18). In a suit for enhancement, in which it was contended that the land constituted a grant created before 1790, it was decided that the onus was on the plaintiff to show that the land was included in the *samindari* at the time of the permanent settlement and was, therefore, liable to enhancement (*Ahsanullah v. Bassarat Ali Chaudhri*, 10 Calc., 920). In a suit for

enhancement when the defendant pleads that rent had been assessed on lands covered by hedges and ditches and forming boundaries between fields, and that according to custom such land was not liable to pay rent at all, the onus is on the defendant to prove the custom (*Haro Chaudhri v. Jayeshar Nandi*, 6 W. R., Act X, 46). When a defendant claims abatement of rent on the ground of diluvion the onus is on him (*Suvi v. Abhai Nath Basu*, 2 W. R., Act X, 28). So, also, when he pleads remission of rent (*Banwari Lal v. Furlong*, 9 W. R., 239). In a suit for rent by a share-holder, when the defendant contends that he is not bound to pay otherwise than by entirety to the person entitled to the whole rent, the onus is on the plaintiff to show that he is entitled to sue for a fractional portion (*Lalan v. Hemraj Singh*, 20 W. R., 76). The onus of proving land to be *sir*, or proprietor's private land, lies on the person who alleges it to be so (*Huri Das v. Ghansham Narain*, 6 All., 286; sec. 120 (2)). Where a raiyat holds land of considerable extent under a *samindar* and alleges that one or two plots occupied by him are held under a different title, the onus is on him to prove his allegation (*Ram Kumar Rai v. Bijai Govind Baral*, 7 W. R., 535). In a suit for the recovery of damages for illegal distraint on the ground that the landlords had distrained the plaintiff's crop, alleging his rent to be more than it really was, it was held that the onus was on the plaintiff to prove the annual rent payable by him (*Chandra Kant Mukhurji v. Hem Lal Mandal*, 1 C. W. N., 463). In suits for arrears of rent, when the defendant pleads that the land is *lakhiraj* or rent free, and in suits in which plaintiff seeks for a decree that land is rent-paying, the *onus* is on the plaintiff to prove that the land is rent-paying (*Gumani Kazi v. Hurihar Mukhurji*, W. R., Sp. No., F. B., 115; *Matangini Debi v. Mohamed*, W. R., Sp. No., 1864, Act X, 30; *Moti Lal Aduk v. Jadupati Das*, 2 W. R., Act X, 44; *Gangadhar Singh v. Binola Dasi*, 5 W. R., Act X, 37; *Mahomed Azsar Ali v. Nasir Mahomed*, 3 B. L. R., A. C., 304; *Mritunjai Chakravartti v. Biruda Kanta Rai*, 6 W. R., Act X, 18; *Jageshary Debi v. Gudadhar Banurji*, 6 W. R., Act X, 21; *Shib Nurain Rai v. Chidam Das*, 6 W. R., Act X, 45; *Ram Kumar Ghosal v. Debi Prasad Chatturji*, 6 W. R., Act X, 87; *Dhanmani Debi v. Sattrughan Sil*, 6 W. R., Act X, 100; *Bissessar Chakravartti v. Umacharan Rai*, 7 W. R., 44; *Parsidh Narain Singh v. Bissessar Dyal Singh*, 7 W. R., 148; *Pradhan Gopal Singh v. Bhup Rai*, 9 W. R., 570; *Raj Kishor Mukhurji v. Harihar Mukhurji*, 10 W. R., 117; *Prem Chand Barik v. Brajanath Kundu*, 10 W. R., 204; *Ambika Charan Mandal v. Ram Dhan*, 11 W. R., 35; *Man Mohun De v. Sri Ram Rai*, 14 W. R., 285; *Sridhar Nandi v. Braju Nath Kundu*, 14 W. R., 286; 2 B. L. R., 211; *Harihar Mukhurji v. Madhab Chandra*, 8 B. L. R., 566; 14 Moo. I. A., 152; *Hemangini Debi v. Jatindra Mohan Ghosh*, 10 C. W. N., clxiv; *Arjannissa*

v. Piari Mohan Mukhurji, 1 Calc., 378 ; *Milan v. Mahomed Ali*, 10 C. W. N. 434). But in *Guru Prasad Rai, v. Jaggabandhu Mazumdar* (W. R., Sp. No., F. B., 15) it was said that the defendant having by giving a *kabulyat* for a portion of the land in dispute acknowledged himself to be the plaintiff's raiyat as to that portion, it lay on him to prove his plea of his not being the plaintiff's raiyat as to the rest, and in *Satto Charan Ghosal v. Mohesh Chandra Mitra*, (3 W. R., 178), that in a suit not for resumption, but for assessment at enhanced rates, in which the defendant admits that the main portion of the lands in dispute is rent-paying, but does not separate the rent-free lands, the plaintiff is not bound to prove that the lands are rent-paying until the defendant points out their precise situation. In *Ashrafunnissa v. Mohun Deb Rai* (5 W. R., Act X, 48), it was laid down that some *prima facie* proof of an ostensible rent-free holding and not a bare allegation by the defendant to this effect is necessary to bar a plaintiff in a suit for enhanced rent, where the defendant admits a tenancy for one portion of the land for which rent is sought. In *Nihal Chandra Mistri v. Hari Prasad Mandul*, (8 W. R., 183), it was ruled that where there is *prima facie* evidence that a tenant holds part of the land sought to be enhanced as paying rent and part as rent-free, the onus is shifted from the raiyat to the landlord. The same rule was laid down in *Hira Ram Bhattacharji v. Ashraf Ali* (9 W. R., 103) and in *Sashi Bhushan Bakshi v. Mahomed Matain* (4 C. L. J., 548) it was decided that when a purchaser at a *patni* sale proves his purchase and on his applying for possession is resisted by persons holding lands within the ambit of the *patni* tenure, who set up the defence that the lands held by them are *lakhiraj*, it is for them to prove that the lands have been held not under the *patni* tenure but as *lakhiraj* ; so that according to these cases it would seem as if the onus lay in the first instance on the defendant. In another case, *Shamdan Ali v. Mathuranath Dutta*, (14 W. R., 226), in which the defendant pleaded that certain lands, though lying within the ambit of the *zumindari*, did not form part of it, but were *lakhiraj*, it was held that the onus lay on the defendant to show the alleged independent title ; failing to do so, the *prima facie* title made out by the plaintiff ought to prevail. Again, in *Newas Bandopadhyaya v. Kali Prasanno Ghosh*, (6 Calc., 543 : 8 C. L. R., 6), it was ruled that in a suit for enhancement of rent, when the tenant pleads that a portion of the land of which the rent is sought to be enhanced is held by him rent-free, the onus is on the tenant to prove *prima facie* that such portion of the land is so held by him ; if he be successful in this, the onus is then shifted upon the landlord to rebut such *prima facie* evidence. Then, in *Akbar Ali v. Bhyea Lal Jha*, (6 Calc., 666 : 7 C. L. R., 497) it was decided that the burden of proof is on the landlord, when the land is held by a person not a tenant

of the plaintiff for other land, or when such land is occupied as a separate parcel or holding, or otherwise in such a manner as to be entirely distinct from other lands held by the same person as a tenant under the plaintiff. When the land is occupied by a tenant of the *samindar* and is not distinguished in the manner described above from the rest of the land, as to which tenancy is admitted, the burden of proof is on the tenant. But in *Bacharam Mandal v. Piari Mohan Banurji*, (9 Calc., 813 : 12 C. L. R., 475), it was said that in suits for resumption of lands alleged by the defendant to be rent-free, the burden of proof is in the first instance on the plaintiff to show that the lands are rent-paying. This he can do by proof of receipt of rent, or that its proceeds were taken into account at the permanent settlement, or by other sufficient means. The fact that the land in dispute is surrounded by other lands held by the defendant, for which rent is paid is evidence to show that the land forms part of his tenure and is not his *lakhraj* holding, but no decree can be passed adversely to the defendant on it, unless it be held to establish a *prima facie* case in favour of the plaintiff. This was followed in *Narendro Narain Rai v. Bishan Chandra Das*, (12 Calc., 182), in which it was decided that in a suit for resumption of lands, when the defendants allege that the lands are *Lakhiraj*, the onus is on the plaintiff in the first instance to show that the lands are *mal*, or rent-paying, and that if he fails to make out such a *prima facie* case, the suit should be dismissed.

In a suit by a landlord for *khas* possession of land in defendant's possession, the defendant set up and proved an intermediate tenure. Held, that it was on the plaintiffs to prove that the parcel of land sought to be resumed was outside such tenure (*Rajendra Kumar Basu v. Mohima Chandra Ghosh*, 3 C. W. N., 763). See also *Hridai Krishna v. Nobin Chandra Sen*, (12 C. L. R., 457) ; and *Mohima Chandra Mazumdar v. Mohesh Chandra Neogi*, (16 Calc., 479).

In a suit to recover possession of certain land described as *khas khamar*, of which plaintiffs had been forcibly dispossessed, defendants claimed to hold the land by way of permanent *jote* for 40 years, and contended that the plaintiffs had no right except to receive rents. Held, that as the defendants admitted the ownership to be with the plaintiffs, and prayed to be allowed to hold possession under the *jote*-tenancy, the burden of proof lay with the defendants (*Hari Mohan Poddar v. Gharib-ullah Mallik*, 22 W. R., 417). But when the tenant had been in long and peaceable possession of land as part of an admitted tenure, it was held that in a suit for ejectment it lay on the landlord to prove that the land was his *khas* land (*Nanda Lal Goswami v. Jajireswar Haldar*, 6 C. W. N., 105). In a suit for ejectment from certain homestead land, it was

held that it lay on the defendant who alleged the land to be agricultural, or part of an agricultural holding to prove this plea (*Girija Prasanna Mukhurji v. Jadu Nath Karmakar*, 10 C. W. N., cxxxvi).

Jamabandies, Chittas, Collection papers and Road Cess returns.—*Jamabandi* papers can never be treated as independent evidence of any contested fact (*Chamarni Bibi v. Aimullah Sardar*, 9 W. R., 451). *Jamabandi* papers can only be used as corroborative evidence of the same value as that which is attached to books of account (*Gajju Koer v. Ali Ahmad*, 14 W. R., 474 : 6 B. L. R., App., 62). *Jamabandi* papers for the years in respect of which rent is claimed, prepared by the officers of the person claiming the rent, cannot be evidence of his right to that which is set forth, though the evidence of the *patwari* as to the amount collected in former years, corroborated by the *Jamabandies* of those years, would be conclusive (*Dhanukdhari Sahi v. Toomey*, 20 W. R., 142). But the *jamabandi* papers of a former *patwari* are valueless without the personal testimony of the *patwari* (*Bhagwan Datta Jha v. Sheo Mangal Singh*, 22 W. R., 256). *Jamabandi* papers filed by a proprietor in *batwara* proceedings to which the tenant is not necessarily a party cannot be used as evidence against such tenant in a suit for arrears of rent (*Kishor Das v. Parsan Mahtun*, 20 W. R., 171). A purchaser of a *khas mahul* cannot sue for enhanced rent upon a *jamabandi* to the terms of which the tenant has not consented (*Inayatullah Miuh v. Nubo Kumar Sarkar*, 20 W. R., 207 ; *Reazudin Mahomed v. McAlpine*, 22 W. R., 540). Where tenants, who were *aimadars*, voluntarily signed a *jamabandi* drawn up under section 9, Reg. VII of 1822, specifying the amounts of rent payable by them, it was held to be evidence against them (*Watson v. Mohendra Nath Pal*, 23 W. R., 436). A *jamabandi* prepared by a Deputy Collector, while engaged in the settlement of land under Reg. VII of 1822, is a public document within the meaning of section 74 of the Evidence Act. It is not necessary to show that at the time when such document was prepared, a raiyat affected by its provisions was a consenting party to the terms specified (*Taru Patar v. Abinash Chandra Datta*, 4 Calc., 79). In a subsequent case, *Akshai Kumar Datta v. Shama Charan Patilandi*, (16 Calc., 586), however, a doubt was expressed whether a *jamabandi* drawn up under Reg. VII of 1822 was a public document, and it was ruled that to make the enhanced rent stated in such a *jamabandi* binding upon a tenant, there must be either an assent to that enhancement, or else a compliance with the provisions of the rent law with reference to enhancement of rent in force at the time of such enhancement.

Butwara papers.—Entries in *butwara* papers as to the amounts of the rents payable by tenants are evidence in the same way as entries in

record-of-rights under Chap X. (*Janky Dobby v. Kirtakati Roy* 13 C. W. N., 93).

Certified copies of survey measurement *chittas*, field-books and maps are admissible in evidence (*Gopinath Singh v. Anandmayi Debi*, 8 W. R., 167). Whatever may be the value of *chittas* in questions between the *samindar* and his tenants, they cannot be received as evidence of boundary against a rival proprietor without further account, introduction or verification (*Ekkauri Singh v. Hera Lal Sil*, 11 W. R., P. C., 2 : 2 B. L. R., P. C., 4). But they may be evidence in such cases, if proved to be genuine and attested (*Sudakhina Chaudhrani v. Raj Mohan Basu*, 3 B. L. R., A. C, 377). When *chittas* were produced by the plaintiff as evidence of certain lands being rent-paying, it was held that they were sufficiently attested by the deposition of the village *gumastha* that they were the *chittas* of the village when he was *gumastha*, and that he had been present when, with their assistance, the measurement of the lands of the village had been tested (*Debi Prasad Chaturji v. Ram Kumar Ghosal*, 10 W. R., 443). *Chittas* not duly proved are not legal evidence, though admitted by the lower Court without objection from the opposite party (*Izzatullah Khan v. Ram Charan Ganguli*, 12 W. R., 39). *Chittas* and maps made in contemplation of resumption proceedings in the presence of both parties and signed by the parties are legal evidence (*Sham Chand Ghosh v. Ramkrishna Behra*, 19 W. R., 309). *Butwara chittas* are no evidence between raiyats in a suit for possession of a *jote* (*Gopal Chandra Saha v. Madhab Chandra Saha*, 21 W. R., 29). When a *chitta* describes certain land as a *taluk*, this, in the absence of evidence to the contrary, implies a permanent interest (*Krishna Chandra Gupta v. Safdar Ali*, 22 W. R., 326). *Chittas* produced from the Collectorate, when there is nothing to show that they are the record of measurements made by any Government officer, are not public documents (*Nityanand Rai v. Abdur Rahim*, 7 Calc., 76). *Chittas* made by Government for its own use are nothing more than documents prepared for the information of the Collector, and are, without the resumption proceedings, not evidence for the purpose of proving that the lands are or are not of a particular character or tenure (*Ram Chandra Sahu v. Bansidhar Nuik*, 9 Calc., 741. See also *Jannajai Mallik v. Dwarkanath Mahanti*, 5 Calc., 287 : 4 C. L. R., 574; *Dwarka Nath Misra v. Tarita Mayi Debi*, 14 Calc., 120; *Girindra Chandra Ganguli v. Rajendro Nath Chaturji*, 1 C. W. N., 530; and *contra*, *Mahomed Fedai v. Oziudin*, 10 W. R., 340; *Turaknath Mukhurji v. Mohendra Nath Ghosh*, 13 W. R., 56; *Mochiram Manjhi v. Bissambar Rai*, 24 W. R., 410).

Jaibaki papers, brought from the possession of the plaintiff, cannot be used against a defendant without showing that he has in some way agreed to them (*Baidyonath Parui v. Rassik Lal Mitra*, 9 W. R., 274).

Jama-wasil-bakies, or collection papers, are not evidence by themselves. The mere production of such papers is not enough. But coupled with other evidence, they often afford a very useful guide to the truth (*Roshan Bibi v. Hari Krishna Nath*, 8 Calc., 926). *Jama-wasil-bakies* are not independent evidence of the amount of rent mentioned therein, but it is perfectly right that a person who has prepared such *jama-wasil-baki* papers on receiving payment of the rent should refresh his memory from such papers when giving evidence as to the amount of rent payable (*Akhil Chandra Chaudhuri v. Nayu*, 10 Calc., 243). Collection papers are no evidence *per se* and can only be used when they are produced by a person who has collected rent under them, and who merely uses them for the purpose of refreshing his memory (*Mahomed Mahmud v. Safur Ali*, 11 Calc., 407. See also *Gobind Chandra Addi v. Aulo Bibi*, 1 W. R., 49; *Allyat Chinum v. Jagat Chandra*, 5 W. R., 242; *Khiru Muni Dasi v. Bijai Gobind Baral*, 7 W. R., 533; *Ram Lal Chakravartti v. Tara Sundari Barmanya*, 8 W. R., 280; *Sheo Sahai Rai v. Gudar Rai*, 8 W. R., 328; *Newazi v. Lloyd*, 8 W. R., 464; *Shib Prasad v. Promotho Nath Ghosh*, 10 W. R., 193; *Bijai Gobind Baral v. Bhiku Rai*, 10 W. R., 291; *Mohim Chandra Chikravartti v. Purno Chandra Banurji*, 11 W. R., 165; *Belnet Khun v. Rash Bihari Mukhurji*, 22 W. R., 549; *Sarnomayi v. Johar Mahomed Nasyo*, 10 C. L. R., 545).

Entries in books of account are admissible in evidence not only for refreshing the witness's memory, but also as corroborative evidence of the story he tells (*Bhoy Hong Kong v. Ram Nathan Chetty*, 6 C. W. N., 401).

Under sec. 95, Act IX, B. C., of 1880, road-cess returns are admissible in evidence against the person by or on behalf of whom they have been filed, but are not admissible in his favour. Road-cess papers are not admissible against a tenant either as substantive or corroborative evidence of the amount of rent payable by him (*Mahomed Mahmud v. Safur Ali*, 11 Calc., 409) or against another share-holder (*Nasiran v. Gauri Sankar Singh*, 22 W. R., 192). See *Daitari Mahanti v. Jagat-bandhu Mahanti*, (23 W. R., 293). The statements made by deceased tenants in cess returns filed by them regarding assets of the tenancy are not admissible in evidence (*Hem Chandra Chaudhuri v. Kali Prasanna Bhaduri*, 26 Calc., 832).

Kabulyats.—A contemporaneous oral agreement cannot under sec. 92 of the Evidence Act be proved to show that the rent is less than what is stated in a registered *kabulyat* (*Radha Ramon Chaudhuri v. Bhawan Prasad Bhumiik*, 6 C. W. N., 60). Oral evidence is not admissible for the purpose of contradicting a statement made in a registered *kabulyat* as to the amount of rent, but evidence is admissible to show that the *kabulyat* was never intended to be acted on, or that

there was a waiver of some of its terms (*Beni Madhub Gorani v. Lal Mati Dasi*, 6 C. W. N., 242). Mere non-payment of rent, though for nearly fifty years, would not affect the landlord's right to rent, where the tenant gave a *kabulyat* in favour of the landlord or his predecessor in title. In such a case, it is for the tenant to show that the contract has been determined, or was never intended to be acted on (*Bama-charan Chaudhuri v. Administrator General*, 6 C. L. J., 72).

Thak maps.—In a suit in which one of the issues was whether certain land was *mal* or *lakhiraj* the *thak* map was admitted as relevant evidence, as it was necessary to show in such map the lands claimed as *lakhiraj* (*Raj Kumar Pal v. Basanta Kumar Guha*, 7 C. W. N., 612).

Entries in *Thakbast* maps are evidence on which a Court may act (*Abdul Hamid v. Kiran Chandra Rai*, 7 C. W. N., 849).

Effect of ex-parte and unexecuted decree.—The early rulings as to the effect of *ex parte* and unexecuted decrees for rent are conflicting. In *Kali Kant Rai v. Ashrafunnissa*, (2 W. R., 326) it was ruled that in a suit for enhancement *ex parte* summary decrees for rent are not satisfactory proof that a variation has taken place in the amount of the rent paid. In *Ram Sundar Tewari v. Srinath Dewasi*, (10 W. R., 215 : 14 B. L. R., 371), it was said that a rent decree, not having been executed within the period allowed by law for execution, was no decree and no evidence against the fact of an intervenor having actually received the rents *bona fide*. A previous rent decree may be admissible in evidence, but unless followed up by evidence that it has been executed, or that the defendant against whom it was obtained paid the money and satisfied the decree, it is worthless (*Bishan Prakash Singh v. Rattan Gir* 20 W. R., 3). A decree for rent at a certain rate is not conclusive proof that the land was held for the years to which the decree relates at that rate until it has been executed (*Beni Madhub Banurji v. Bhagbat Pal*, 20 W. R., 466). Where a suit is tried *ex parte*, and no issues of fact are raised beyond the general issue involved in the claim, the decree considered as evidence is only evidence that the amount decreed was at the time due from the plaintiff to the defendant (*Goya Prasad Aubasti v. Tarini Kant Lahiri*, 23 W. R., 149). A decree obtained *ex parte*, is not final within the meaning of expl. 4, section 13 of Act X of 1887. Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property (*Nil Mani Singh v. Hira Lal Das*, 7 Calc., 23 : 8 C. L. R., 257). This was followed in a suit for arrears of rent of a half share of land, in which the plaintiffs relied upon an *ex parte* decree for rent at a certain rate, which they had obtained in 1869 against the tenants of this share. It did not appear that the *ex parte* decree had been

executed. It was accordingly held that it was open to the defendants to dispute the rate of rent claimed, and that the plaintiffs were bound to prove that they were entitled to recover it (*Bhagirath Patoni v. Ram Lochan Deb*, 8 Calc., 275). An *ex parte* decree obtained against the registered tenant is not admissible as evidence against an unregistered transferee not a party to it (*Ram Nurain Rai v. Ram Kumar Chandra*, 11 Calc., 562). On the other hand, in *Chandra Kumar Datta v. Jai Chandra Datta*, (19 W. R., 213), it was said that a defendant who omits to defend a suit and allows an *ex parte* decree to be passed against him cannot afterwards object to the decree as no evidence. And in *Ram Sundari Debi v. Ram Prasad Sadhu*, (8 W. R., 288), and *Durga Charan Chaturji v. Daya Mayi Dasi*, (20 W. R., 243), (which were both rent-suits), it was declared that decrees do not become ineffectual because they have not been executed. Then, in a later case decided by a Full Bench, it was held that an *ex parte* decree for rent is admissible as evidence of the rate of rent in a subsequent suit between the same parties, even though it has become inoperative from not having been executed within the period of limitation (*Bir Chandra Manikya v. Ram Krishna Shaha*, 23 W. R., 128 : 14 B. L. R., 370). In a subsequent stage of the same case, it was ruled that a decree obtained *ex parte* is in the absence of fraud or irregularity as binding for all purposes as a decree in a contested suit. Such a decree is admissible in evidence, even though the period for executing it has expired (*Bir Chandra Manik v. Harish Chandra Das*, 3 Calc., 383). See also *Mahomed Kana v. Ran Mahomed* (24 W. R., 254) and *Radhasunder v. Girish Chander*, (13 C. W. N., cxii). In *Jagadamba Dasi v. Tarakant Banurji* (6 C. L. R., 121), their Lordships of the Privy Council held that the effect of an appeal decided by them *ex parte*, could not on that ground be disputed. And in *Hansa Koer v. Sheo Gobind Raut*, (24 W. R., 431), it was held that an *ex parte* decree is admissible in evidence *quantum valeat*, even against a person who was no party to it. This conflict of rulings was considered in the Full Bench case of *Madhu Sudan Shahu Mandal v. Brue*, (16 Calc., 300). In this case, four questions were referred by the referring Bench for the decision of the Full Bench, (1) whether an *ex parte* decree for rent operates so as to render the rate of rent *res judicata* between the parties? (2) whether it so operates, if the rate of rent alleged by the plaintiff is recited in the decree, without any express declaration that the rate of rent so alleged has been proved? (3) whether it so operates, if the rate of rent alleged is expressly declared by the decree to have been proved? (4) whether an *ex parte* decree operates so as to render any question decided by the decree *res judicata* in the absence of proof that such decree has been executed? The Full Bench answered the first three questions in the negative. It was said :—"The mere statement of an alleged rate of rent

in the plaint in a rent suit in which an *ex parte* decree is made, is not a statement as to which it must be held that an issue within the meaning of sec. 13 of the Code of Civil Procedure was raised between the parties so that the defendant is concluded by the decree. Neither a recital in the decree of the rate alleged by the plaintiff nor a declaration in it as to the rate of rent which the Court considers to be proved would operate in such a case as to make that matter a *res judicata*; assuming, of course, that no such declarations were asked for in the plaint as part of the substantive relief claimed, the defendant having a proper opportunity of meeting the case." The fourth question propounded by the referring Bench was not answered. See also *Manindra Chandra Nandy v. Upendra Chandra Hazra* (9 C. L. J. 343). In the case of *Madhu Manjari Chaudhurani v. Jhumar Bibi* (1 C. W. N., 120), it was held that an *ex parte* decree for arrears of rent which has been duly executed is some evidence as to the rate of rent. See also *Mati Lal v. Nripendra Nath Rai*, (2 C. W. N., 172). It is good evidence, so long as it is unreversed (*Aturannissa v. Golabti*, 2 C. L. J., 98 n). But an *ex parte* decree which has never been executed is no evidence as to the rate of rent (*Ram Chandra Dutta v. Haro Gobindo Bhattacharji* 1 C. W. N., cxxviii).

A suit lies to set aside on the ground of fraud an *ex parte* decree for rent obtained under Act X of 1859 (*Gopini Baisnabi v. Gopal Krishna Jana*, 1 C. L. J., 101 n).

The new section 153 A added to the Act by s. 47, Act I, B. C., 1907 and Act I, E. B. C., of 1908 deals with the procedure to be followed before *ex-parte* decrees for rent can be set aside.

Res judicata.—The decision of an issue in a Revenue Court cannot make the matter raised in that issue *res judicata* in a subsequent suit in the Civil Court; for the two Courts are not of concurrent jurisdiction (*Edan v. Bechan*, 8 W. R., 175). Thus, the decision of a Revenue Court as to the genuineness of a *mukarari pattah*, coming collaterally in issue before it, does not bar a subsequent suit relating to the *pattah* in the Civil Court (*Junessar Das v. Gulzari Lal*, 11 W. R., 216; *Chandra Kumar Mandal v. Namni Khanum*, 19 W. R., 322). So, a decision in a suit under Act X of 1859 that certain land is not *lukhiraj*, is not conclusive in a subsequent suit between the same parties in the Civil Court (*Hari Sankar Mukhurji v. Krishna Patro*, 24 W. R., 154 : 15 B. L. R., 238), and a judgment in a suit before a Deputy Collector, which decides only questions of rent pronounced by a Court not having jurisdiction to decide the questions of title to the property itself cannot be regarded as amounting to *res judicata* in a subsequent suit brought to decide the question of title to that property (*Khettra Krishna Mittra v. Dinendra Narain Rai*, 3 C. W. N., 202). Whether decisions in suits under Act VIII, B. C., of 1869 and under the Bengal Tenancy

Act operate as *res judicata* or not depends on the provisions of sec. 13 of the Code of Civil Procedure. Accordingly, if the causes of action in the two suits are different, there can be no *res judicata*. Thus, a suit for *khas* possession is no bar to a later suit for rent of the same lands (*Bhagwan Das v. Sheo Narain Singh*, 23 W. R., 253). If the parties in the subsequent suit are not the same as, or do not claim under, the parties in the previous suit, there is no *res judicata* (*Wahid Ali v. Nath Turaho*, 24 W. R., 128; *Brajo Bihari Mitra v. Kedar Nath Mazumdar*, 12 Calc., 580). This latter case was decided by a Full Bench, and in the argument in it various conflicting decisions on the point are noticed. See also the Full Bench case of *Alimudin Biswas v. Kafiludin*, 2 C. W. N., cxlvii. But in *Dwarka Nath Rai v. Ram Chandra Aich*, (26 Calc., 428; 3 C. W. N., 266) also decided by a Full Bench, it was ruled that a decision in a suit for rent brought by a plaintiff against a person who is alleged to have been his tenant in respect of certain land does not operate as *res judicata* in a subsequent suit brought by the same plaintiff for establishment of his title to the land, not only against the alleged tenant but also against the person whose title as landlord the tenant defendant had set up in the rent suit. In *Gopal Das v. Gopi Nath Sarkar* (12 C. L. R., 38) it was held that a suit for rent in which the sole defendant denied the plaintiff's title, alleging that B and A were his landlords, having been dismissed on the ground that the plaintiff had failed to prove his title, another suit brought by the plaintiff against A, B and C for possession was barred under sec. 13 Civ. Pro. Code. This decision was dissented from in the references to a Full Bench in both *Alimudin Biswas v. Kafiludin*, and *Dwarka Nath Rai v. Ram Chandra Aich*, but in neither case was it expressly overruled. A decree obtained in a previous suit for rent by an *ijaradar* does not operate against the tenant on the question whether the relation of landlord and tenant exists in a subsequent suit for rent brought by the superior landlord (*Balaram Mandal v. Kartik Chandra Rai*, 4 C. W. N., 161). If the question for consideration in the subsequent suit is not the same as in the previous suit, the former suit is no bar to the latter (*Gopi Mohan Mazumdar v. Hills*, 3 Calc., 789). So, too, if the matter in issue in the former suit has not been heard and finally decided (*Brindaban Chandra Sarkar v. Dhananjai Laskar*, 4 C. L. R., 443; *Raghu Nath Mandal v. Jagat Bandhu Basu*, 8 C. L. R., 393; *Nil Madhub Sarkar v. Brajo Nath Singh*, 21 Calc., 236). Accordingly, a previous decision in a suit for rent does not operate as *res judicata* in a subsequent suit where the amount of rent subsequently accrued due is in issue (*Jotindra Mohan Tagore v. Shambhu Chandra Bhattacharjee*, 4 C. W. N., 43) though it may give rise to a presumption under sec 51, that the rents for subsequent years remained the same (*Beni Prasad Kocri v. Raj Kumar Ghosh*, 6 C.

W. N., 589). But if the parties in the two suits are the same and the self-same title is substantially in issue in both suits, the second suit is barred (*Mohima Chandra Mazumdar v. Asradha Dasia*, 21 W. R. 207 ; *Gobind Chandra Kundu v. Turak Chandra Basu*, 3 Calc., 145 : 1 C. L. R., 35 ; *Bimala Sundari Chaudhrani v. Panchanan Chaudhri*, 3 Calc., 705). There is nothing in sec. 13 of the Code of Civil Procedure to indicate that the judgment in the two suits must be open to appeal in the same way in order that the decision upon any issue in the earlier suit may bar the trial of the same issue in the later one. So, a decision of an issue in a suit in which no second appeal lies to the High Court bars the trial of the same in a subsequent suit in which such second appeal is allowed (*Rai Charan Ghosh v. Kumud Mohan Dutta*, 25 Calc., 571 : 2 C. W. N., 297). If the matter at issue in the second suit was directly and substantially at issue in the first suit and was heard and finally determined, the matter is *res judicata* (*Naba Durga Dasi v. Faiz Baksh Chaudhuri*, 1 Calc., 202 : 24 W. R., 403 ; *Man Mohini Debi v. Binod Bihari Saha*, 25 W. R., 10 ; *Bassan Lal Sukal v. Chandi Das*, 4 C. L. R., 1 ; *Kartik Chandra Pal v. Sridhar Mandal*, 12 Calc., 563 ; *Rudha Madhab Halder v. Monohar Mukhurji*, 15 Calc., 756 ; L. R., 15 I. A., 97). So when in the previous suit brought by the predecessor in title of the plaintiff against the defendants for rent, one of the questions raised was whether the land, in respect of which rent was claimed was *mal* or *lakhiraj*, and that question was decided in favour of the defendants, and in a subsequent suit by the plaintiff against the same defendants for *khas* possession of certain land the defence was that the land in dispute was their *lakhiraj* land, and that the judgment in the previous suit operated as *res judicata*, it was held that, though the previous suit was one for rent, yet the issue upon the question whether the land was *mal* or *lakhiraj* was raised directly in the suit and, therefore, the subsequent suit was barred (*Kasiswar Mukhopadhyaya v. Mohendro Nath Bhandari*, 25 Calc., 136). A brought a suit for rent of the year 1305. The defendant pleaded that the rent had been reduced. It was found that the abatement pleaded was not established. A then sued for the rents of 1306 to 1309. The same plea of abatement was raised : *held*, that the question was *res-judicata* (*Sita Nath v. Tareesh Nath*, 3 C. L. J., 26n). But the decision of a question of title in a rent suit does not operate as *res judicata* in a subsequent suit for title, when such question of title was raised only incidentally in the rent suit (*Srihari Banurji v. Khilish Chandra Rai*, 24 Calc., 569 : 1 C. W. N., 509 ; *Alimudin Biswas v. Kasfludin*, 2 C. W. N., cxlvii ; *Nityanand Sarkar v. Ram Narain Das*, 6 C. W. N., 66. ; *Haranath Chakravartti v. Kamini Kumar Chakravartti*, 3 C. L. J., 25n) *Thakur Magundeo v. Thakur Mahadeo*, 18 Calc., 647 ; *Harihar*

Pandey v. Chowdhury Karamut Hossein, 9 C. L. J., 493). If the matter at issue in a subsequent suit ought to have been, but was not raised in a previous suit, it is *res judicata* (*Dinamayi Debi v. Anango Mayi*, 4 C. L. R., 599; *Ghursobhit Ahir v. Ram Dutt Singh*, 5 Calc. 923; 6 C. L. R., 537; *Bhairab Dyal Sahu v. Sahadeb Poddar*, 1 C. W. N., cci). But in *Kailash Mondal v. Barodu Sundari Dasi*, 24 Calc., 711: 1 C. W. N., 565) a defendant was held entitled to raise the plea of *benami* notwithstanding that it was not raised in the previous suit, and in *Umesh Chandra Maitra v. Barodu Das Maitra*, (28 Calc., 17) it was said that when in a suit for rent, the rent claimed expressly includes an item which is objected to as an illegal cess, the mere fact that in a previous rent suit between the same parties regarding the same tenure the defendant did not raise the same plea, although he could have done so, would not in the absence of a judicial determination of the point in the previous suit, preclude him from raising the plea in the subsequent suit. Where in a previous suit it had been wrongly held that a permanent lessee was not liable to pay cesses, which he had agreed in his *kabulyat* to pay, it was held that the claim for cesses in a subsequent suit was barred by the rule of *res judicata* (*Padmanand Singh v. Rudha Singh*, 9 C. W. N., 469). In *Pannu Singh v. Nirghin Singh*, (7 Calc., 298: 8 C. L. R., 310), the plaintiff sued for arrears of rent for the year 1282 at the rate of Rs. 2-8 per bigha. The defendant alleged that the rate was only fifteen annas per bigha. The Judge found that the plaintiff had not proved that the rate of rent was Rs. 2-8 per bigha, and, without finding that the proper rate was fifteen annas, gave the plaintiff a decree for that amount. The plaintiff brought a subsequent suit for arrears of rent for the year 1283, when it was decided by the Court of first instance and by the lower Appellate Court that he could only recover arrears of rent at the rate of fifteen annas. It was held, however, that they were wrong, for the Judge in the previous suit did not determine the question as to what was the proper rent due by the defendant, so his decision did not make the matter *res judicata*. But in a later case, *Jeo Lall Singh v. Sarfan* (11 C. L. R., 483), the facts of which were very similar, this case was distinguished. In this later case, the plaintiff having in a previous suit for rent failed to prove the amount of rent claimed by him, the Court in trying the issue, "what is the proper amount of rent payable to the plaintiff" gave the plaintiff a decree for the amount admitted by the defendant, that amount being less than that claimed by the plaintiff. The plaintiff then sued the defendant for the rent of a subsequent year, and he claimed at the same rate as he had claimed in the previous suit. It was held that the decree in the former suit was *res judicata* as to the proper rate payable by the defendant, as in the former case the

Judge had come to a decisive finding as to what was the proper amount of rent payable. In *Hari Bihari Bhagat v. Purgun Ahir*, (19 Calc., 659), it was said that whether in these circumstances the former decision acted as *res judicata* or not, would depend on whether in the previous suit all that had been determined was that the plaintiff should recover from the defendants as rent for the period in question the sum admitted by them to be due, or whether what was decided was that the sum admitted by the defendant was the proper amount of rent payable for the land in suit for the year or years in question. The decision in this case was followed in *Bakshi v. Nizamuddin* (20 Calc., 505) in which approval was expressed of the rule said to be therein laid down, *viz*, that where in a rent suit a Judge tries the question and gives judgment on the question, "what is the yearly rent," and makes that the foundation of his judgment, that becomes *res judicata* between the parties. See also *Bhuban Mohan Sen v. Durga Nand Das*, (2 C. W. N., ccciii). Where the question of the annual rent payable in respect of a tenancy had been raised and determined in a previous suit which was contested by some of the defendants, it is *res judicata* against the contending defendants, as well as against those who did not appear in the previous suit (*Bepin Bihary Das v. Harachandra Bairagi*, 9 C. L. J., 82n). When in a previous suit a particular stipulation contained in a *kabulyat* has been held to be valid, it is not open to a Court subsequently to try the issue whether that particular stipulation is valid or not (*Bishnu Priya Chaudhurani v. Bhaba Sundari Debya*, 28 Calc., 318). When there has been no actual adjudication as to the rate of rent, but a decree given at the rate admitted by the defendant, the decision may be taken to determine the rent claimed in that suit and to give rise to a presumption under sec. 51 that the rent in subsequent years remained the same (*Beni Prosad Koer v. Raj Kumar Chobe*, 6 C. W. N., cxx ; *Kali Rai v. Pratap Narain*, 5 C. L. J., 92). A decision in a suit where the rate of rent is not in issue does not operate as *res judicata* as regards the rate in a subsequent suit (*Balaram Mundal v. Kartik Chandra Rai*, 4 C. W. N., 161). Whether an issue as to the rate of rent generally is a direct or an indirect issue in a suit for arrears of rent must be determined with reference to the frame of such suit (*Rajendra Nath Ghosh v. Tarangini Dasi*, 1 C. L. J., 248). Where the decision whether certain lands were included in the defendant's *jama*, was not necessary for the decision of the suit, it cannot be *res judicata* in a subsequent suit brought by the plaintiff against the defendant to establish his title to these lands and for *khas* possession (*Sahadeb Dhali v. Ram Rudra Halidar*, 10 C. W. N., 820). In *Rash Dhuri Gop v. Khakon Singh*, (24 Calc., 433), it has been ruled that in a suit for arrears of rent, when the plaintiff fails to prove that the defendant holds at the rate alleged, it is not the duty of the Court to ascertain what is a fair rate,

unless asked to do so and it was pointed out that the case of *Pannu Singh v. Nirghin Singh* (7 Calc., 298) does not lay down that it is bound to do so. Previous decrees for cesses at a certain rate obtained by a landlord against a tenant do not operate as *res judicata* in a subsequent suit for cesses claimed at a higher rate, although they are admissible as evidence in the suit and may raise a presumption against the tenant (*Rickettes v. Rameswar Malia*, 28 Calc., 109).

In a previous suit for rent against a permanent tenure-holder in a permanently settled area, it was held, following a ruling of the High Court, that the plaintiff could recover interest on the arrears only at the rate of 12 *p. c. p. a.* The ruling referred to was subsequently overruled by a Full Bench : *held*, that the case must be decided by the law as it stood when judgment was pronounced, that the plaintiff could recover at the higher rate mentioned in the defendant's *kabulyat*, and that the decision in the previous suit was not *res judicata* (*Alimunnissa Chaudhurani v. Shama Charan Rai*, 32 Calc., 749 : 9 C. W. N., 466 : 1 C. L. J., 176).

See also notes at p. 191 on "*Res judicata in cases of claims for reduction of rent*" and at pp. 360-362 on "*Res judicata in settlement cases*."

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit, for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Venue of suit for rent of fishery.—Under this section it has been held that a suit for the rent of a *jalkar* or fishery can be brought in the Court where a suit for possession of the fishery will lie (*Shibu Halder v. Golap Sundari Dasi* 1 C. W. N., lxxxvii). A suit for recovery of rent due on a tenure for a sum not exceeding Rs. 1000 is

cognizable in a Munsif's Court, although a suit for recovery of possession of the tenure, the value of which is Rs. 4500, lies in a Subordinate Judge's Court (*Fazlur Rahim v. Dwarka Nath Chaudhuri*, 7 C. W. N., 402 : 30 Calc., 453). A suit for the rent of a fishery is entertainable in ordinary Civil Courts, which have jurisdiction in rent suits (*Shib Prosad Chaudhuri v. Vakai Pali*, 33 Calc., 601). For a discussion as to where a suit ought to be brought for money payable for the lease of the right to cut and remove jungle for a certain time—at the Court having jurisdiction at the place where the jungle stood or at the Court having jurisdiction where the contract was made : *Seemle* ; at the latter Court.—See. *Abdulla Sarkar v. Asrafali Mandal* (7 C. L. J., 152).

Jurisdiction of Small Cause Court.—Suits for recovery of rent, other than house-rent, are excluded from the jurisdiction of the Small Cause Court under art. (8), Sched. II, Act IX of 1887. A Mofussil Small Cause Court has, therefore, now no jurisdiction to entertain a suit for arrears of rent of home-stead or *bastu* land (*Uma Churn Mandal v. Bijari Bewah*, 15 Calc., 174). But a suit between landlord and tenant for the recovery by the tenant of excess payments taken by the landlord in respect of the rent of the holding is a suit of the nature cognizable by the Court of Small Causes, and therefore, no second appeal lies where the amount claimed is below Rs. 500. All that section 144 does is to determine the *venue*, but it has no bearing on the question of the nature of the suit (*Ranga Rai v. Holloway* 26 Calc., 842 : 4 C. W. N., 95). See also *Ganesh Hathi v. Mehta Vyankatram*, (8 Bom., 188). A suit brought by an assignee of a landlord for recovery of arrears assigned after they fell due is excepted from the cognizance of the Court of Small Causes (*Srish Chandra Basu v. Nasim Kazi*, 27 Calc., 827 : 4 C. W. N., 357). See note to sec. 3, cl. (5), *ante*, p. 30.

145. Every naib or gumashta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Naibs or gumashtas to be recognized agents.

XIV of 1882.

V of 1908.

This section should be read in connection with sec. 187 (1), which empowers an agent to represent a landlord in proceedings in Court in every way, unless the Court otherwise directs.

Stamp duty.—The written authority referred to in this section must be stamped as a power of attorney under art. 48, Sched. I, Act II of 1899. The explanation to this article provides that for the purposes of this section more persons than one when belonging to the same firm shall be deemed to be one person. The Madras High Court have held under this article that a document given to one person by thirty-six persons jointly interested in a certain sum of money authorizing him to receive payment thereof is subject to a stamp duty of one rupee under art. 50 (b). But the Calcutta High Court have held that when an instrument contains a several power of attorney conferred by two or more persons, it requires a separate stamp for each power (*In the matter of Jai Krishna Mukhurji*, No. 1504 of 1885, decided 10th December, 1885). See Board's Circular, Dec., 1885, p. 108.

A Court in which a suit for arrears of rent is brought on behalf of one person, through the agency of another, is entitled to inquire as to the agent's authority : if that is not proved, the suit fails (*Nam Narain Singh v. Raghu Nath Sahai*, 19 Calc., 678).

A Naib or Gumashta cannot sue in his own name.—Any application or act in, or to, any Court, required or authorised by law to be made or done by a party to a suit or appeal may, except when otherwise provided, be made or done by recognized agent (O. III, r. 1, Act V of 1908). But a recognized agent cannot institute or defend a suit or appear in his own name (*Mokha Harakraj Joshi v. Bissesswar Das*, 5 B. L. R., App., 11 : 13 W. R., 344). So, a *gumastha* must institute a suit in the name and on behalf of his master (*Madhu Sudan Singh v. Moran & Co.*, 11 W. R., 43). He cannot sue in his own name, and can only conduct the suit for his employer like any other agent (*Kunjo Bihari Rai v. Purna Chaturji*, 9 Calc., 450 : 12 C. L. R., 55).

A Naib or Gumastha cannot grant leases.—It does not fall within the ordinary scope of the duties of a *mofussil naib* to grant leases or *pathuhs*. It is requisite in such cases that express authority should be proved to make the grants valid (*Golak Muni Debi v. Asimudin*, 1 W. R. 56 ; *Uma Tara v. Pina Bibi*, 2 W. R., 115 ; *Panchanan Basu v. Piari Mohun Deb*, 2 W. R., 225 ; *Kali Kumar Das v. Anis*, 3 W. R., Act X, 1 ; *Annada Prasad Banurji v. Chundra Sikhar Deb*, 7 W. R., 394 ; *Abilak Rai v. Dalial Rai*, 3 Calc., 557).

A Gumastha cannot consent to the transfer of a holding.—The purchaser of a raiyati holding is bound to communicate with the *samindar* and obtain his consent to the transfer ; without this being

done, a *gumashta's* receipts of rent are not binding on the *zamindar* (*Bhajokhari Banik v. Aka Ghulam Ali*, 16 W. R., 97).

Limitation.—A suit for an account by a landlord against his agent on the basis of a registered agreement is governed not by the 3 years rule laid down in art. 89, but by the 6 years rule laid down in art. 116. The time runs from the date when the contract to render accounts is broken. If under the contract the account has to be rendered at the end of every year, the plaintiff is not entitled to accounts for more than 6 years. If the agent does not hold under registered agreement, the case would be governed by art. 115 (*Motilal Basu v. Amin Chand Chattopadhyaya*, 1 C. L. J., 211).

A landlord's agent cannot retain illegal cesses collected by him.—A landlord's agent is liable to pay to the landlord any sums collected from the tenants as *kharcha* or illegal cesses and a suit by a landlord for recovery of such sums is maintainable (*Nagendra Bala Dasi v. Gurudayal Mukhurji*, 7 C. W. N., 535).

146. The particulars referred to in section 58 (O. VII, r. 9 and O. IV, r. 2) of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Special register
of suits.
XIV of 1882.
V of 1908.

Form of Register.—The Local Government has directed that the special register to be kept by each Civil Court, under the provisions of this section, shall be in the form prescribed by O. IV, r. 2, Act V of 1908. and numbered as 14 of Sch. I, Appendix H annexed to that Act (Notification dated the 20th February, 1886, published in the *Calcutta Gazette* of March 3rd, 1886, part I, p. 142).

Special Register of rent suits for statistical purposes only.—The provision in Act VIII, of 1869, B. C., directing suits instituted under that Act to be entered in a separate register was for statistical purposes, and not for the purpose of separating into parts the jurisdiction exercised by one Court, so as to render a suit brought under that Act liable to be stuck off in order that a fresh suit might be brought under Act VIII of 1859 in the same Court and on the same of cause of action, even supposing that the suit was not really a suit for rent, and that the consideration stipulated to be paid for the defendant's occupation of the land was charity and not rent (*Jallaluddin v. Burne*, 18 W. R., 99).

The mere fact of a suit having by some mistake of the office been registered in the book of rent suits does not conclude the plaintiff or render his suit liable to dismissal (*Ramnarain Mitra v. Nobin Chandra Murdafarash*, 18 W. R., 208). There should be no question in the mind of a Court as to which side of the Court is to entertain the suit, or under what Act it is to be tried. It was one of the purposes of the legislature, when it removed the cognizance of a certain class of actions from the Collector's Court to the Munsif's Court, that there should no longer be any question in any case whether the suitor had invoked the exercise of the right jurisdiction, and whether the Court was competent to do complete justice between the parties. It is the plain duty of a Court when a suit is brought before it to entertain it and to endeavour to try the matter in question between the parties upon the whole merits (*Puriag Datta Rai v. Feku Rai*, 19 W. R., 160). Two causes of action, one by plaintiff as purchaser of arrears of rent, and the other for rent due, were held to be properly joined in one suit cognizable by the Civil Court without any such distinction as that of different sides of the Court (*Bhagwan Sahai v. Sangessar Chaudhri*, 19 W. R., 431). A Civil Court has jurisdiction to try a suit for possession whether it be brought under Act VIII, B. C., of 1869, or as a regular civil suit (*Gobind Mahtun v. Ram Khelawan Singh*, 22 W. R., 478).

147. Subject to the provisions of section 373 (O. XXIII, r. 1) of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit, against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent-suits.

XIV of 1882.

V of 1908.

Object of the section.—The object of the section, according to the Select Committee, was “to prevent raiyats being harassed by successive suits for rents when by agreement or custom a larger number of instalments than four may be established.” (Selections from papers relating to Bengal Tenancy Act, 1885, p. 385).

EASTERN BENGAL & ASSAM.

[147A.] (1) The provisions of section 375 (O. XXIII, r. 3)

Compromise of suits between landlord and tenant.

of the Code of Civil Procedure shall not apply to any suit between landlord and tenant as such.

(2) If any suit between landlord and tenant as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit :

Provided that no decree shall be passed in accordance with any agreement, or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

147A. Notwithstanding anything contained in section 375

Compromise of suits between landlord and tenant.

(O. XXIII, r. 3) of the Code of Civil Procedure if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not pass a decree in accordance with such agreement or compromise unless it is satisfied for reasons to be recorded in writing, that the terms of such agreement or compromise are such that if embodied in a contract they could be enforced under this Act :

Provided that in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in ac-

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by section 29 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence, that the statements made by the parties thereto are correct.

cordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

Section 147A as enacted by Bengal Act I of 1907, imposes serious obstacles to the free compromise of certain suits between landlord and tenant as such. The Select Committee say :—

“Judicial officers and others are strongly opposed to the proposed section 147A on the ground that when the parties before the Courts have come to a compromise, neither is likely to assist in any enquiry which the Court may endeavour to make and that it will in practice be impossible to arrive at the truth.

As a decree cannot affect the rights of third parties, the proposed sub-section (4) would seem to be unnecessary. Moreover the effect of the proposed section would seem to be that even in a suit for enhancement, the landlord could not obtain by compromise, an enhancement exceeding that obtainable by contract, though in itself fair and equitable and such as the court might decree on contest. The majority of us are of opinion that it is not in the interests of either landlord or tenant that when the parties have come to court they should be required to contest every enhancement-suit to the bitter end, and that in a suit properly framed for the purpose it should be open to the parties to enter into compromises providing for a reasonable and legal enhancement.”

Under the section as altered by this Act the courts are not blindly to accept compromises entered into between landlord and tenant, but will be able to act upon compromises by which the parties agree to equitable enhancements within legal limits.

This section was added by sec. 42 Act I, E. B. C., of 1908.

Illustration.—*A*, a proprietor, agrees that *B*, his tenant, shall be recorded as an occupancy-raiyat; this affects the rights of the tenants of *B*. The Court must, under sub-section (4), inquire whether *B* is a tenure-holder or a raiyat as defined in section 5. If the Court finds on the evidence that *B* is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that *B* is a tenure-holder.

(5) A decree passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction.]

This section was added by sec. 42, Act I, B. C., 1907. Its object is explained in the Notes on Clauses of the Bill of 1906, as follows :

"The proposed section 147A is intended to give to Civil Courts the same power to disregard illegal and inequitable compromises regarding rent and other matters in suits between landlord and tenant as such, as it is proposed to confer upon Revenue Officers engaged in the preparation of the record-of rights. Section 375 of the Code of Civil Procedure governs compromises filed in suits under the present law, and there is reason to believe that decrees have been passed giving effect to compromises containing illegal and inequitable provisions, and in particular that the provisions of section 29 regarding the limits of enhancement of rent by contract between landlord and tenant have frequently been nullified in this way."

See note to sec. 109 B, p. 371.

[147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the

Regard to be paid by Civil Courts to entries in record-of-rights.

subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.]

This section was added by section 42, Act I, B. C., 1907. In the Notes on Clauses of the Bill it was said :

“The proposed section 147B is intended to define more clearly the force to be attached to entries in the record-of-rights in proceedings and suits between landlord and tenant as such. Under the present Act, (section 103B), such entries are presumed to be correct until the contrary is proved. But cases have occurred which indicate that it is doubtful whether the Courts pay sufficient attention to this presumption. It is proposed therefore to provide that the Courts shall have regard to the entries in the record-of-rights, unless such entries have been proved by evidence to be incorrect, and that when a Court passes a decree at variance with such entries, it shall record its reasons for so doing.”

The expression “subject-matter in dispute” was introduced into the section by the Select Committee on the Bill of 1906, as they considered “that the Court should have regard to entries in the record-of-rights which may be produced before it, and which are relevant to any matter in dispute between the landlord and tenant.”

EASTERN BENGAL & ASSAM.

148. The following
Procedure in rules shall
rent suits. apply to suits
 for the recovery of rent:—

(a) sections 121 to 127
 (both inclu-
XIV of 1882. sive) (O. XI,
V of 1908. rr. 1, 2, 3, 5,
 6, 8, 11), 129 (O. XI,
 r. 13), 305 (O. XXI,
 r. 83) and 320 to
 326, (ss. 68, 70, 71,

148. The following
Procedure in rules shall
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(a) sections 121 to 127
 (both inclu-
XIV of 1882. sive) (O. XI,
V of 1908. rr. 1, 2, 3, 5,
 6, 8, 11), 129 (O. XI,
 r. 13), 305 (O. XXI,
 r. 83) and 320 to
 326 (ss. 68, 70, 71,

72 and Sch. III)
(both inclusive) of
the Code of Civil
Procedure shall not
apply to any such
suit ;

(b) the plaintiff shall
contain, in ad-
dition to the
particulars
specified in section
50 (O. VII, rr. 1,
2, 4, 5, 6,) of the
Code of Civil Pro-
cedure, a statement
of the situation,
designation, extent
and boundaries of
the land held by the
tenant ; or, where
the plaintiff is un-
able to give the ex-
tent or boundaries,
in lieu thereof a de-
scription sufficient
for identification ;

[(b 1) where the suit
is for the rent of
land situated with-
in an area for which
a record-of-rights

72 and Sch. III)
(both inclusive) of
the Code of Civil
Procedure shall not
apply to any such
suit ;

(b) the plaintiff shall
contain, in
addition to
the particu-
lars specified in sec-
tion 50 (O. VII, rr. 1,
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and boundaries of
the land held by the
tenant ; or, where
the plaintiff is un-
able to give the ex-
tent or boundaries,
in lieu thereof a de-
scription sufficient
for identification ;

(b 1) where the suit is
for the rent of land
situated within an
area for which a re-
cord-of-rights has

has been prepared and finally published, the plaintiff shall further contain a list of the survey plots comprised in the tenancy and a statement of the rental of the tenancy according to the record-of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such list or statement :

Provided that, in all cases in which the Court admits a plaintiff which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may, require the Collector to supply, without payment of fee a verified or

been finally published, the plaintiff shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement :

Provided that, in all cases in which the Court admits a plaintiff which does not contain such statement, the Court shall, and in any other case in which it sees fit, the Court may require the Collector to supply, without payment of fee, a verified or certified copy of, or

certified copy of, or extract from, the record-of-rights relating to the tenancy ;

(b2) where an alteration has been made in the area of the tenancy, since the record-of-rights was prepared and finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed.]

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only ;

extract from, the record-of-rights relating to the tenancy :

Provided also that such statement when contained in the plaint shall be deemed to be a description of the land sufficient for identification within the meaning of clause (b).

(b2) Where an alteration has been made in the area of the tenancy, since the record-of-rights was prepared and finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed.

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant

XIV of 1866. and registered under Part III of the Indian Post Office Act, 1866 ;⁽¹⁾

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served ;

(e) a written statement shall not be

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only ;

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant

XIV of 1866. and registered under Part III of the Indian Post Office Act, 1866 ;⁽¹⁾

when a summons is so forwarded in a letter, and it is proved that

(1) Now read "Chapter VI of the Indian Post Office Act, 1898."

filed without the
leave of the Court ;

(f) the rules for re-
cording the
evidence of
witnesses

XIV of 1882.
V of 1908.

prescribed by sec-
tion 189 (O. XVIII,
r. 13) of the Code
of Civil Procedure
shall apply, whether
an appeal is allowed
or not ;

[(f)] when any account-
books, rent-rolls, col-
lection-papers, mea-
surement-papers or
maps have been pro-
duced by the land-
lord before any
Court, and have
been admitted in
evidence in a suit
pending therein,
copies of, or extracts
from, such docu-
ments, certified by a
duly authorized offi-
cer of such Court to
be true copies or ex-
tracts, may, with

the letter was duly
posted and register-
ed, the Court may
presume that the
summons has been
duly served ;

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ment shall not be
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leave of the Court ;

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tion 189 (O. XVIII,
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(f) when any ac-
count-books, rent-
rolls, collection-
papers, measure-
ment-papers, maps
or extracts from re-
cord-of-rights have
been produced by
the landlord before

the permission of the Court, be substituted on the record for the originals, which may then be returned to the landlord ; and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals. ;]

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears ;

(h) notwithstanding

XIV of 1882 anything con-
V of 1908. tained in sec-
tion 232 (O. XXI, r.

any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorized officer of such Court to be true copies or extracts, may, with the permission of the Court, be substituted on the record for the originals which may then be returned to the landlord ; and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals ;

(g) the Court may, when passing the decree, order on the

16) of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

Extended to the Chota Nagpur Division except the district of Manbhum (Not., Feb. 9th, 1903) but for section 50 of the Code of Civil Procedure in cl. (b), read sections 46 and 47 of the Chota Nagpur Landlord and Tenant Procedure Act, see: Appendix V. The present Law there, however, is Act VI, B. C., 1908.

Clause (a). Sections of Civil Procedure Code inapplicable.

—Sections 121 to 127 of the Civil Procedure Code (O. XI, r. 1-11 of Act V of 1908) relate to the examination of parties by interrogatories. Section 129 (O. XI, r. 13 of Act V of 1908) gives a Court power to order discovery of documents. Section 305 (O. XXI, r. 83 of Act V of 1908) empowers a Court to postpone a sale to enable the defendant to raise the amount of the decree by mortgage, lease or private sale of the property. Sections 320 to 326 (ss. 68-72 and Sch. III of Act V of 1908) relate to the

oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears ;

(h) notwithstanding

XIV of 1882 anything contained in section
V of 1908.

tion 232 (O. XXI, r.

16) of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

This section has been altered so as to suit local circumstances. The Select Committee say :—"Owing to the sub-infeudation that complicates tenures in many districts of this Province, Settlement Officers in those districts, have found it impracticable to give to landlords a list of the survey-plots comprised in each tenancy. They have given instead to each group of landlords a statement containing, *inter alia*,

transfer to the Collector for execution of decrees relating to immovable property which the Local Government with the sanction of the Governor-General in Council may effect by notification in the official Gazette. From this clause as well as from sec. 143, it would appear that the provisions of the Civil Procedure Code (Act V of 1908) relating to execution, including those of sec. 244, (S. 47) are applicable to decrees obtained under this Act. The transferee of a portion of a holding is a representative of the judgment-debtor within the meaning of s. 244, C. P. C., (*Bachhu Lal Sahu v. Bishu Nath Jha*, 11 C. W. N., cxii). A landlord is entitled to bring one suit for the total rents of three separate holdings giving the total area as the sum of the three holdings (*Nanda Lal Mukherji v. Sudhu Charan Khan*, 7 C. L. J., 96).

A suit for rent against some of several joint tenants is maintainable, as joint tenants are jointly and severally liable (*Jogendra Nath Ray v. Nagendra Narain Nandi*, 11 C. W. N., 1026).

The provisions of sec. 244, (s. 47) apply to proceedings in execution of decrees under Act VIII of 1869, B. C., but not under Act X of 1859 (*Brajo Gopal Sarkar v. Basirunnissa Bibi*, 15 Calc., 179).

Clause (b).—Extent and boundaries of land to be specified in plaint.—The provisions of this clause are imperative; yet, in suits for the recovery of rent, the extent and boundaries of the land held by the tenant would not seem to be material, except when the amount of rent recoverable depends on the area of the land and the rent is to be calculated at so much per bigha. Such particulars would seem as a general rule to be required only in suits for the recovery of possession (*Mahomed Ismail v. Dhandar Kishor Narain*, 25 W. R., 39). If either the landlord or the tenant desires to have the situation, quantity and boundaries of the subject of the tenancy determined, this can always be effected by an application under sec. 158. It has, however, been held that "in a suit for arrears of rent, where the plaintiff claims a certain rent as payable in respect of certain lands mentioned in the plaint, and the defendant denies the occupation of these lands at the rents alleged by the plaintiff, but admits that he holds other lands at different rents, the proper issue to be tried is whether the defendant holds the lands

set forth in the plaint at the rent specified. A simple issue as to whether the defendant holds the *jamas* set forth in the plaint under the plaintiff is not sufficient (*Bhaichal Nasyo v. Shamnayisi Mahomed*, 1 C. W. N., 152), and in *Rash Dhari Gop v. Khokhan Singh* (24 Calc., 435), it has been said that "from sec. 148 (b) of the Bengal Tenancy Act it would seem to be necessary that in a suit for the recovery of rent the land in respect of which that rent is payable should be clearly defined." In a later case (*Pizaruddin Laskar v. Ambica Charan Mitra*, 5 C. W. N., 121), however, it was laid down that in a rent suit it is not absolutely necessary to give the extent and boundaries of the lands in respect of which rent is claimed, and that where there is difficulty in giving these particulars, it would be enough if a description sufficient for identification is given. In this suit, the Lower Appellate Court had decreed the suit without deciding the question of the area of the lands and leaving that question open, and it was held that its decision was correct and did not contravene the provisions of this clause. See also *Durgu Charan Laha v. Kula Chand Biswas*, (7 C. W. N., 615). There is no provision in the Civ. Pro. Code authorising the dismissal of a suit on the ground that land in dispute as described in the plaint cannot be identified (*Jaludhur Mandal v. Kinu Mandal*, 1 C. W. N., clxxxix. See also *Kazim v. Danesh*, 1 C. W. N., 574; *Krishnaya Navada v. Panchu*, 17 Mad., 187). But in *Murari Mohan Deb v. Amriteswari Debi*, (1 C. L. J., 27n), it was held that the plaint did not comply with the provisions of this clause, that the description given therein was not sufficient for the identification of the lands, and that the suit must be dismissed. In a later case however (*Rajendra Lal Gossami v. Hira Lal Bag*, 13 C. W. N., xix) the dismissal of a suit on the ground of the failure of the plaintiff to supply a correct description of the boundaries was held bad.

New clauses (b1) and (b2).—The Select Committee in their report on the Bill of 1906 say with reference to these clauses :—

"We are of opinion that it is necessary to require the Court to record reasons when it dispenses with a statement in the plaint. Unless this is done, some landlords will file plaints not containing the required particulars, and to save themselves trouble, Munsiffs will continue to decree according to the claims without reference to the record-of-rights. If the Munsiff is required to record his reasons for dispensing with the statement of the rental according to the record, he will insist on such particulars being furnished wherever possible.

We consider that in addition to a statement of the rental of a tenancy, the plaint should show the survey-plot numbers comprised in the holding. The Court should not be allowed to have any excuse for not referring to the entries in the record-of-rights. Where a plaintiff, for a good and sufficient reason, fails to produce a statement of the rental or a list of survey-plot

numbers, the Court should be obliged to call for a copy of the record from the Collector. We think that delay will be prevented and corruption of the *amla* checked if in all cases the record-of-rights is supplied by the Collector direct to the Court. No fees should be charged in any case for the copies.

We have thought it necessary to make it quite clear that a statement of rental and of survey plots in the plaint will be necessary, in cases where, since the record was finally published, a holding has been divided during partition proceedings, or amalgamated with another holding, or in other ways treated so as to obscure its identity."

Clause (c). The summons.—The provisions of this clause show that ordinarily issues need not be framed in rent suits. High Court Circular, No. 372 of the 4th February, 1871, issued under the provisions of Act VIII, (B C.), of 1869, directs, that no suit for arrears of rent is to be proceeded with *ex parte* until the expiry of 14 days from the date of the service of the summons (High Court's Circular Orders, Civil, Chap. I, p. 53).

Clause (d.) Service of summons by post.—The High Court has not yet framed any rule for the service of the summons by post. The latter part of this clause is in accordance with the rulings in the cases of *Lutf Ali Miah v. Piari Mohan Rai* (16 W. R., 223), and *Jogendra Chandra Ghosh v. Dewarkanath Karmokar* (15 Calc., 681), in which it was laid down that a person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents.

Clause (e).—Court-fees on written statements.—A written statement filed by a defendant in a civil suit at the first hearing does not require a Court-fee stamp (*Cherag Ali v. Kadir Mahomed*, 12 C. L. R., 367; *Nagu v. Yeknath*, 5 Bom., 400). A written statement called for by the Court after the first hearing is also exempt from Court-fee duty under sec. 19, cl. iii, Act VII of 1870 (*Nagu v. Yeknath*, 5 Bom., 400).

Clause (f).—Evidence how to be recorded.—In suits for the recovery of rent whether an appeal is allowed or not (see sec. 153), evidence is to be recorded under sec. 189 (O. XVIII, r. 13) of the Civil Procedure Code (Act V of 1908), which provides that evidence need not be recorded at length; "but the Judge as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record."

In a suit for ejectment, the Munsif, instead of recording the evidence in full in the language of the Court, recorded it in English, as if it were a suit for rent : *held*, that this was a mere irregularity which was cured by sec. 578, C. P. C., (s. 9) of Act V of 1908). (*Ratan Lal Giri v. Farashi*, 11 C. W. N., 826).

Clause (ff).—In the Notes on Clauses to the Bill of 1906, it was said.—

“Much inconvenience is caused to landlords, owing to their original rent-rolls, collection and measurement papers and account books having to be simultaneously filed in Court in different suits for the recovery of arrears of rent. The new clause (ff) provides that, when the originals have been once produced in Court in any suit, the landlord may be permitted to file certified copies of extracts in subsequent suits.”

The clause was modified by the Select Committee, who observed :—

“We think that the provisions of the clause should be extended to maps, and that original copies and extracts should not acquire the evidential value proposed, unless the originals have been not only produced but also admitted in evidence.”

Clause (g).—Execution of decrees of ejectment for arrears.

—A decree for ejectment for arrears of rent is not in any case to be executed for fifteen days [sec. 66 (2)], which period may be extended [sec. 66 (3)]. In such a case execution on the oral application of the decree-holder obviously cannot be granted.

Clause (h).—Assignment of decrees for arrears of rent.—

A sale held in execution of a decree for arrears of rent on an application, by the assignee of the decree when the landlord's interest in the property itself is not transferred to the assignee, passes no title to the auction purchaser. A purchaser of the same property at a sale held in execution of a mortgage decree obtained after the first sale, acquires a good title as against the first purchaser (*Guru Charan Nath v. Kartik Nath*, 10 C. W. N., 44). The provisions of this clause do not apply to a case in which a decree is transferred by operation of law *e. g.*, when the decree-holder dies, and the right to execute the decree vests in his heir or representative (*Uma Sundari Dasi v. Brajanath Bhattacharji*, 16 Calc., 347). The word “assignee” as used in this clause does not include trustees who execute decrees under an assignment, which is not for their benefit but for the benefit of the heir of the assignor (*Chatrapat Singh v. Gopi Chand Bothra*, 26 Calc., 750 ; 4 C. W. N., 446 ; *Moharaj Bahadur v. Surendro Narain*, 12 C. W. N., cxii, s. c., *subnom*, *Maharaj Bahadur v. Forbes*, 35 Calc., 737).

The fact that an assignment of a decree for arrears of rent was made before the coming into force of the Tenancy Act will not protect from the provisions of sec. 148 (h) an assignee who proceeds to execution afterwards ; but execution cannot be refused where before that Act came into operation the assignment had been recognized by a Court of execution under sec. 232 of the Civil Procedure Code (*Kulash Chandra Rai v. Judunath Rai*, 14 Calc., 380). When a decree for rent had been passed before the passing of the Bengal Tenancy Act, and had

been assigned to a *benamidar* after the passing of the Act, and execution had been taken out by him, though the landlord's interest had not become vested in him, and certain *taluks* had been sold on his application and had been purchased by himself, it was held that the sales were bad and could not be regarded as sales at which the purchaser became entitled to the *taluks* free of all incumbrances. "Though the decree was passed under the former Rent Act," it was said, the assignment of the decree and the application for execution by the "assignee having been made after the Bengal Tenancy Act came into operation, clause (h) of section 148 of that Act must apply to the execution proceedings; and the sale upon such an application, which is prohibited by that clause, must be held to be no sale under the rent law" (*Shashi Bhushan Guha v. Gagan Chandra Shaha*, 22 Calc., 364). In a case in which an *ijaradar* on the expiry of his lease sold all his decrees for rent and all arrears of rent due to him to three persons, two of whom were his superior landlords, it was contended that section 148 (h) was no bar to the execution of the decrees, as the landlord's interest had vested in the superior landlords on the determination of the *ijara*. It was, however, held that sec. 148 (h) was a bar to the execution, as the *ijaradar's* interest as landlord had not vested in the superior landlords (*Dwarkanath Sen v. Piarmohan Sen*, 1 C. W. N., 694). An application for execution by the assignee of a decree which was obtained by a landlord against a defaulting tenant for arrears of rent which accrued due between the date of sale of the tenure in execution of a previous decree for rent and the date of the confirmation of such sale, is barred by this clause, as being one for the execution of a decree for arrears of rent (*Karuna Mayi Banurji v. Surendra Nath Mukhurji*, 26 Calc., 176). It has also been ruled that although, if a landlord's interest has been vested in an assignee of a rent decree, he can execute it, yet the decree so assigned ceases to be a rent decree and becomes only an ordinary civil demand recoverable under the Code of Civil Procedure (*Dina Nath De v. Golap Mohini Dasi*, 1 C. W. N., 183). See also *Bhagwan Sahai v. Sangeshar Chaudhri* (19 W. R., 431), and the note to sec. 72, p. 245 on the subject of "*Back rents*." As to how decrees passed under the former law are to be executed after the coming into operation of the Tenancy Act, see note to sec. 2 (4), pp. 11-15.

A decree obtained in a suit for rent brought by a landlord who ceases to have interest in the land during the pendency of the suit is not a decree for rent. When such a decree is assigned by the decree-holder and is afterwards re-assigned to him, this clause is no bar to the execution of the decree (*Nagendra Nath Basu v. Bhuban Mohan Chakravartti*,

6 C. W. N., 91.) When the plaintiff in a suit is shown to have been the landlord at the date of suit and also at the date of decree, both suit and decree would be under the Act, and the fact that the plaintiff sold his interest in the tenure subsequently to obtaining the decree will not prevent him from obtaining the benefit of sec. 65 (*Khetra Pal Singh v. Kriarthamayi Dasi*, 10 C. W. N., 547).

In a suit for rent by an assignee of the landlord, when the landlord admits that he has sold the arrears of rent to the plaintiff, and when such landlord is also a party to the suit, it is not open to the Court to find that the sale is *benami* (*Amrita Lal Mukhurji v. Giridhar Ghosh*, 5 C. L. J., 398).

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[148A. Where a co-sharer landlord who has instituted a	148A. Where a co-sharer landlord who is entitled to
<div data-bbox="116 649 279 755" data-label="Text"> <p>Suits for arrears of rent by co-sharer landlords.</p> </div> <p>suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer landlords defendant to the suit, to furnish him with correct</p>	<div data-bbox="518 649 683 755" data-label="Text"> <p>Suits for arrears of rent by co-sharer landlords.</p> </div> <p>sue for his share of the rent separately and has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharers parties defendant to the suit, is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant, or of the co-sharer</p>

information on these landlords defendant to the points, or on either of suit to furnish him with them, correct information on these points, or on either of them,

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.]

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent, and a decree obtained by him in a suit so framed shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

This section was added by sec. 44 Act I, E. B. C., of 1908.

"The intention of the framers of the bill was to limit the application of this clause to such co-sharers as collect their shares of the rent separately. We have inserted words to make their intention clear." Rep. Sel. Com.

This section was added to the Act by s. 44, Act I, B. C., of 1907. Its object is explained in the Notes on Clauses of the Bill of 1906 as follows :

"Under the present law, considerable difficulty in realizing rents is often experienced by co-sharer landlords, who make rent collections jointly. A decree for arrears of rent, obtained by a co-sharer for the amount due to him alone, is a mere money decree (*Jogendra Nath Ghosh v. Pabun Chandra Ghosh* 8 C. W. N., 472) and the tenure or holding, in respect of which the arrears are due, does not pass to the purchaser in a sale for the execution of such a

decree (*Narainuddin v. Srimanta Ghosh*, 29 Calc., 219), unless he can get himself recognised by the other co-sharers. Decrees for arrears of rent obtained by single co-sharers, are therefore often of little value, and the system is further objectionable, in that it exposes the tenant to the trouble of several successive suits brought by different co-sharer landlords. Considering that the majority of estates in the Province are held by cosharer landlords, it seems necessary to provide a remedy for the present state of things. As it is often impossible to get all the landlords to join in a suit for arrears of rent, a single co-sharer should be empowered to sue for the rent due to all the co-sharers, and that the tenure or holding should pass in execution of a decree obtained in such a suit, provided that the other co-sharers have been made parties."

In the Notes on Clause 34 of the Bill, now added to the Act as section 158 B, it is said :

"The object of this clause is to counteract the effect of several rulings of the High Court, two of which are cited above in the note on clause 30, as to the nature of suits brought by co-sharer landlords for arrears of rent and as to the effect of decrees obtained in such suits. Their result is that—

- (1) suits in which co-sharer landlords sue for rent are not rent suits, but money suits ;
- (2) the provisions of section 148 do not apply to them ;
- (3) evidence in such suits cannot be recorded summarily ;
- (4) a second appeal lies in them, while an appeal is barred in the case of a decree obtained by a sole landlord ;
- (5) co-sharer landlords cannot sue for four years' rent as sole landlords can under article 2 (b), Schedule III of the Act ; and
- (6) decrees obtained in suits by co-sharer landlords can be executed within twelve years, instead of within three, as in case of ordinary rent decrees.

Such results are anomalous and inconvenient, and the clause, the introduction of which has been recommended by the High Court, will have the effect of removing them."

The Select Committee in their report say :

"At the time when the Bill was published in the Gazette a reference had been made to a Full Bench of the High Court in which the correctness of the decision in the case of *Jogendra Nath Ghosh v. Puban Chandra Ghosh*, (8 C. W. N. 472) was called in question. In December last the Full Bench decided that the question propounded did not properly arise in the case in which it was referred, and declined to give any decision on the point. The Hon'ble Chief Justice observed that as there appeared to be a considerable conflict of judicial opinion on the question, it would be well if the Legislature settled it. Clause 34, now sec. 158 B, therefore, seems to us to be fully justified. We have inserted a new sub-section⁽¹⁾" (i.e. the new section 148A.) "as it

(1) Founded on the case of *Prakash Lal v. Bikkuri Balgobind Sahai*, (19 Calc., 735.)

has been represented to us that the section would not benefit a large class of co-sharer landlords who collect their shares of the rent separately and are not in a position to know the amounts of rent due from the tenants to their co-sharers, and whether they have been paid or not. Such co-sharer landlords will have no remedy unless they are allowed to sue for the rent due to them only, or to the entire body of co-sharers, according to the extent of the information available. The new sub-section will allow a co-sharer to sue for his share only where his co-sharers or the tenant have neglected to supply him with information." See also notes to secs. 158 B, 169, 188 A, and sched. III, arts. (2) and (6).

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, *[except for special reasons to be recorded in writing,]* refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

The words in brackets have been omitted by s. 45, Act I, B. C., of 1907, and Act I, E. B. C., of 1908. The Select Committee in their report on the Bill of 1906 said :

"It has been represented that as a matter of fact a tenant pleading that the rent claimed is due to a third person, or that it is in excess of the amount due, has rarely if ever been called upon to deposit the amount claimed or admitted, because the Courts have given too free an interpretation to the exception. The omission of the words "except for special reasons

to be recorded in writing," by making a deposit necessary in every case in which the defendant admits money to be due, will check the setting up of false pleas."

Sub-section (1). Intervenor.—According to the Select Committee on the Bill, the object of the rule laid down in this section was "to avoid the complication and delay which arise from questions as to the landlord's title being raised in rent suits," and "to force the issue of disputed title to be raised separately and independently of the rent suit." Under Act X of 1859, sec. 77, third persons claiming the rent under a title hostile to the plaintiff could intervene in suits for the recovery of rent; but Act VIII, B. C., of 1869 contained no such provision, and neither does this Act. This section would therefore seem to adopt the rule laid down in *Lodui Mullah v. Kali Das Rai*, (8 Calc., 238 : 10 C. L. R., 581) that where a person sued for rent sets up the title of a third party, and alleges that he holds under, and pays rent to, him, such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property, in respect of which the rent is claimed. "Such a suit raises only two issues,—*viz.*, (1) Does the relation of landlord and tenant exist between the plaintiff and defendant? (2) Are the alleged arrears of rent due and unpaid? And these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff, can properly be made a party to the trial of these issues." In this case it was further said that sec. 28 of Act XIV of 1882, which permits of the adding as defendants in a suit of persons against whom any right to relief is alleged to exist, is not imperative, and that when in a rent-suit the question of the title of a third party is raised, it is better for the proper adjudication of the question of title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose.

It would seem that this section must be read with section 60 of the Act, and that the third person referred to in it must be a registered proprietor, and a defendant cannot plead in defence to a claim by a person whose name is registered under the Land Registration Act that the rent is due to a third person, whose name is not so registered.

Sub-section (2).—Service of notice.—The notice referred to in this sub-section should be served in the mode prescribed by rule 3, Chap. I of the Govt. rules under the Act.

Sub section (3).—In *Jagadamba Debi v. Pratab Ghosh* (14 Calc., 537), it was ruled that a suit by a third person under sec. 149 (3) of the Bengal Tenancy Act is not a title suit and need not be stamped as such. In this case Tottenham, J., expressed an opinion that such a

suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit. In *Rabiunnissa v. Guljan* (17 Calc., 829), however, it was said that the object of sec. 149 was to prevent tenants being harassed when disputes arise between rival claimants to the land in respect of which the rent is due. In a suit under clause (3) of section 149, therefore, the plaintiff is entitled to have the question of title as well as of possession tried and to obtain the injunction therein mentioned. A suit under this clause in which the plaintiff claims the right to receive rent by reason of his being in possession of the land is maintainable, though the decision of the suit may or may not ultimately rest on the question of possession merely without reference to the question of title. The question of possession should be tried first and the suit dismissed if that question be decided against the plaintiff, as he does not rely on his title : but if decided in the plaintiff's favour, the defendant should be put to proof of his title (*Jadab Lal Rai v. Khemunkari Debva*, 8 C. W. N., 238). A suit contemplated by this section is a suit with reference to the money deposited in Court and for an injunction restraining the paying out of the money. The section does not contemplate a suit for the establishment of the relation of landlord and tenant (*Haranath Banurji v. Ananta Dasi* 9 C. W. N., 492). Where in a suit brought under this clause, the plaintiff made out a strong case ; *held* that the onus was then shifted to the defendant and that the plaintiff was entitled to succeed, though she could not prove realization of rent from the tenants, her case being that the defendant had prevented her from realizing them (*Trailokya Mohini v. Kali Prasanna Ghosh*, 11 C. W. N., 380). In a suit under this section the question of title as well as of possession has to be tried, and unless the plaintiff establishes his title, he is not entitled to the injunction mentioned in sub-sec. (3) (*Mahomet Mazhar v. Kadir*, 11 C. W. N., cxxviii). A suit under this sub-section is in the nature of an interpleader suit and the property in dispute is the money deposited in Court : for determining who must get the money, the question of possession as well as that of title must be incidentally gone into (*Gurudas Rakhit v. Kumud Bandhu Roy*, 7 C. L. J., 40 n.).

The provisions of this section do not apply to a suit for rent brought by a co-sharer landlord (*Ras Bihari Ghosh v. Lalit Kumar Mukherji*, 9 C. W. N., ccxcii).

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court

Payment into Court of money admitted to be due to landlord.

shall, [*except for special reasons to be recorded in writing,*] refuse to take cognizance of the plea unless the defendant pays in to Court the amount so admitted to be due.

The words in brackets have been omitted by s. 45, Act I, B. C., of 1907, and Act I, E. B. C., of 1908. See note to s. 149, p. 473.

Section 150 is highly penal in its character, and it cannot be put in force against a defendant unless he has intentionally admitted money to be due and has not paid it; and such admission must be in the action (*Ali Ahammad v. Bipin Bihari Bisu*, 20 Calc., 595). It does not seem to be necessary that the money should be paid in along with the written statement. It would seem to be sufficient if the money is paid before the plea is taken cognizance of.

Section 150 is limited in its operation to cases in which the plea of the tenant is one in respect of which the burden of proof is upon him; in other words, where it is a plea of confession and avoidance. The section, therefore, does not apply to a case where the rate of rent is in dispute (*Banarasi Prasad v. Makhan Rai*, 30 Calc., 947).

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Provisions as
to payment of
portion of
money.

Court to
grant receipt.

Appeals in
rent-suits.

- (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or
- (b) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees ;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant :

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity ; and may pass such order as the District Judge thinks fit.

[*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.]

The explanation was added by s. 46, Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

Falkar rent is rent within the meaning of Section 153 (*Kamai Mahaldar v. Madhusoodun Ghose*, 6 C. L. J., 669).

Appeals.—The provisions of this section apply only to suits for the recovery of rent : so that an appeal will lie under sec. 540, C. P. C., in all other classes of suits under the Tenancy Act, as well as in suits for the recovery of rent in which any of the questions referred to in the section have been decided. But no appeal lies against an order passed by a Civil Court under sec. 84 (*Goghan Mollah v. Rameshar Narain Mahta*, 18 Calc., 271 ; *Piari Mohan Mukhurji v. Baroda Charan Chakravartti*, 19 Calc., 485), from an order under sec. 91 directing tenants to attend and point out boundaries of land to be measured (*Daya Ghazi v. Ram Lal Sukal*, 2 C. W. N., 351), from an order rejecting an application under sec. 93 of this Act for the appointment of a common manager (*Hossain Baksh v. Mutukdhari Lal*, 14 Calc., 312), from an order under sec. 173 of this Act setting aside a sale (*Raghu Singh v. Misri Singh*, 21 Calc., 825), or from an order under sec. 174 of this Act or sec. 310A, C. P. C., (sec. 89 of Act V of 1908), where applicable, setting aside a sale (*Kishori Mohan Rai v. Saroda Mani Dasi*, 1 C. W. N., 30 ; *Bansidhar Halldar v. Kedar Nath Mandal*, 1 C. W. N., 114). When the original claim exceeds Rs. 50 but a portion of the claim is withdrawn and the residue is less than Rs. 50, the amount claimed is less than Rs. 50. A Munsiff empowered to exercise final jurisdiction under section 153 does not cease to have that power by reason of his transfer to another place (*S. M. Shilabati Debi v. Mr. M. V. Roderiques*, 35 Cal. 547 : 12 C. W. N. 448).

The provisions of this section do not apply to the case of a suit for rent by a co-sharer landlord (*Jogendra Nath Ghose v. Paban Chandra Ghose*, 8 C. W. N., 472). This sets aside a ruling to the contrary effect in the same case reported at 7 C. W. N., 908. In a still later case, however, *Bhagabati Bewa v. Nanda Kumar Chakraburty* (12 C. W. N., 835) the above case was not followed and a contrary view was held as supported by the decision of the Privy Council in *Raja Promoda Nath Roy v. Raja Ramani Kanta Roy* (35 Calc., 331 : 12 C. W. N., 249).

An application for the transfer of a decree for execution under sec. 223, C. P. C., (ss. 38, 39, 41, O. XXI, rr. 4, 5 of Act V of 1908) is an application coming under sec. 244, C. P. C., (s. 47 of Act V of 1908). An appeal therefore lies against an order rejecting such an application (*Bhavani Charan Datta v. Pratap Chandra Ghosh*, 7 C. W. N., 575).

Second appeals.—A second appeal to the High Court will, except in the cases referred to in this section, lie on the grounds (a) of the decision being contrary to some specified law or usage having the force of law ; (b) of the decision having failed to determine some material issue of law or usage having the force of law ; and (c) of a substantial error or

defect in the procedure, which may possibly have produced error or defect in the decision of the case on the merits [sec. 584, C. P. C., (s. 100 of Act V of 1908)]. No second appeal lies when it has been found that the relation of landlord and tenant does not exist between the parties (*Ram Kanai Das v. Fakir Chand Das*, 8 C. W. N., 438). The provisions of this section are not applicable, and will, therefore not bar a second appeal, in a suit for back rents by an assignee from the previous landlord, for such a suit is not a suit by a landlord against a tenant (*Kali Nath Mukhurji v. Kifutullah Mollah*, 1 C. W. N., cxix ; *Mahendra Nath Kalumori v. Kulash Chandra Dogra*, 4 C. W. N., 605). Neither are they applicable in a suit in which rent is only nominally claimed, but which is really a suit for mesne profits or damages (*Chandi Charan Tarasidhar v. Jogendra Chandra Chaudhuri*, 1 C. W. N., cxx). A second appeal will lie from an order under sec. 173 of this Act setting aside a sale, when the auction-purchaser is a *benamidar* for the judgment-debtor and where, therefore, the application for setting aside the sale is really one under sec. 244, C. P. C. (s. 47 of Act V of 1908) (*Chand Muni Dasi v. Santo Muni Dasi*, 24 Calc., 707 : 1 C. W. N., 534). An objection as to the due service of a notice to quit cannot be taken for the first time in second appeal (*Loknath Gop v. Pitambar Ghosh*, 3 C. W. N., 215). When a decree was passed by a Munsiff on an award, and on appeal the decree was set aside on the ground that the award was bad ; *held* that the award being good and valid no appeal lay, and no second appeal lay to the High Court against the order of the Lower Appellate Court, and the remedy lay under sec. 622 (*Ganga Charan Rai v. Sasti Mondal*, 6 C. W. N., 614). In a suit for ejectment in which neither party set up a tenancy, the Lower Appellate Court found the defendant to be a yearly tenant and entitled to a notice to quit : *held* that the suit should have been decreed, and that the Lower Appellate Court could not make for the defendant a case different from and inconsistent with that set up by him (*Sujjad Ahmad Chaudhuri v. Ganga Charan Ghosh*, 9 C. W. N., 460). Where in a suit for ejectment no question of a permanent tenancy was raised by the defendants in their written statements or in any issues framed, the defendants are not entitled for the first time in second appeal to raise the question of either a permanent tenancy or a tenancy in the nature of a raiyati holding at fixed rate of rent (*Mahabir Pershad v. Charles Fox*, 9 C. L. J., 467). The question of the nature of a tenancy, *i. e.*, whether the tenants are merely tenants at will or whether they are yearly tenants is a question of law which can be dealt with by the High Court on second appeal (*Sulatu Das v. Jodu Nath Das*, 8 C. W. N., 774). Where in an appeal in a rent suit a Subordinate Judge left out of account an important portion of the evidence relied on by the plaintiffs ; *held* that this was an error of law and a ground of

second appeal (*Hassan Kuli Khan v. Nakchedi Nonia*, 33 Calc., 200). A plea that the plaintiff was not during the whole period for which rent was claimed, the owner of all the lands included in the tenancy, raises a question relating to the amount of rent annually payable and a second appeal lies against the decision (*Sasi Bhusan Rudra v. Beni Madhab Samanta*, 8 C. L. J., 519). A second appeal would lie in a case in which the plaintiff purchasing at a rent-sale claims rents from cultivating tenants in possession making an intermediate under-tenure holder a party and the latter claims to be entitled to the rent on the ground that his under-tenure subsists (*Mujan v. Phuljan*, 11 C. W. N., ccxlviii). But if there is no first appeal there is no second appeal also : but relief can be given under sec. 115 of the Civil Procedure Code (*Bhagwati Beva v. Nunda Kumar Chakrabarty*, 12 C. W. N., 835). A pure question of law may be urged for the first time in second appeal (*Banku Behary Christian v. Rajchandra Pal*, 13 C. W. N., cciv).

Clause (a). When amount claimed does not exceed one hundred rupees.—The word "order" in this section does not mean merely a final order. It includes an order of remand, and, therefore, reading this section with sec. 588, cl. 28, (O. XLIII, rr. 1, 22) Civil Procedure Code, no appeal lies from an order of remand in a suit for rent for less than Rs. 100, unless such order has determined any of the questions specified in sec. 153 (*Gagan Chand v. Caspersz*, 4 C. W. N., 44; *Balasu Sarkar v. Jaiti*, 3 C. W. N., lxii). Unless it appears either from the finding of the District Judge or elsewhere upon the proceedings that the amount sued for does not exceed one hundred rupees, the High Court has no right to draw any inference to that effect (*Tulsi Pandi v. Buchu Lal*, 9 Calc., 596; 12 C. L. R., 223). An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100. Nor can an application made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by sec. 52 of Bengal Act VIII of 1869, confer such right of appeal (*Parbati Charan Sen v. Mandari*, 5 Calc., 594). A second appeal will not lie in a suit for arrears of rent and ejectment when the sum claimed is less than Rs. 100, and when a decree is given for the rent only, and the claim for ejectment is disallowed (*Brajnath Srimani v. Troilakhya Nath Mitra*, S. A., No. 2194 of 1886 decided by Wilson and O'Kinealy, JJ., June 16th 1887). But from the terms of clause (g), sec. 148, it would seem as if a suit in which a decree for ejectment for arrears of rent is given is merely a suit for the recovery of rent. Read with the provisions of sec. 193 of this Act, this section bars a second appeal, when the rent sued for is rent of a tank, and the amount claimed is less than Rs. 100 (*Mallu Pasari v. Wake*, 2 C. W. N., II).

The word "suit" in sec. 153 includes proceedings in execution of the decree made in the suit. No second appeal, therefore, lies against an order made in the course of proceedings in execution of a decree passed in a suit for rent in which the amount claimed does not exceed Rs. 100, unless the order appealed against decides any of the special questions mentioned in sec. 153 (*Shyama Charan Mitra v. Debendra Nath Mukhurji*, 4 C. W. N., 269: 27 Calc., 484). But this has practically been set aside by the Full Bench decision in *Kali Mandal v. Ramsarbaswa Chakravarti*, (32 Calc., 957).

When a tenant has contracted to pay rent to one of several landlords in respect of his share separately, and such rent has been assessed without reference to the rent payable to the other co-sharers and has been separately collected, the landlord is a separate landlord, and sec. 153 applies (*Bhabatarini Dasi v. Ehabbar Malita*, 5 C. L. J., 235). Where a co-sharer landlord brought a suit for his share of rent amounting to less than Rs. 50, making his co-sharer *pro forma* defendants in it, it was held that a second appeal to High Court was barred under Sec. 153 (*Sital Chandra Bhattacharjee v. Sheikh Afiruddin*, 13 C. W. N., 793).

Clause (b).—When the amount claimed does not exceed fifty rupees.—Speaking generally, it may be said that almost all Munsifs of more than five years' standing have now been invested with summary powers under this clause. (See Govt. notification, No. 945 J. D. of June 15th, 1894, published in the *Calcutta Gazette* of June 27th, 1894, Part I, p. 713.)

Questions relating to title in land, or to some interest in land as between parties having conflicting claims thereto.—In a suit in which the defendant (raiyat) sets up the title of a third person who is not made a party, the decision cannot be considered a binding decision in respect of title as between parties having conflicting claims to land (*Dilbar v. Ishar Chandra Rai*, 21 W. R., 36; *Kashi Ram Das v. Sham Mohini*, 23 W. R., 227; *Raj Krishna Mukhurji v. Srinath Datta*, 23 W. R., 408; *Durga Narain Sen v. Ram Lal Chhutar*, 7 Calc., 330; *Lodai Mollah v. Kali Das Rai*, 8 Calc., 238). No second appeal lies in a case between landlord and tenant, in which the third person set up by the tenant is not made a party, there consequently being no question relating to title as between parties having conflicting claims (*Rama Prasad Rai v. Sarup Paramanik*, 8 Calc., 712). In a suit in which the plaintiff claims rent as *samindar*, and the defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to, or to some interest in, land (*Raj Krishna Mukhurji v. Piari Mohan Mukhurji*, 24 W. R., 114). But in one case in which the value of the suit was under Rs. 100, it was held

that an appeal was not barred, as the lower Court had determined a question of law as to whether the tenure was *guzasta* (*Baij Nath Sahu v. Ramdour Rai*, 7 C. L. R., 369). If a third party claims a title to the land and is made a party to the suit and the question of title is gone into, a second appeal will lie (S.A. No. 942 of 1889, decided 19th May, 1890). In a suit decided under this Act, in which the plaintiff claimed to be the proprietor of a share in a *zamindari*, and in which the other co-sharers were made *pro-forma* defendants and put in written statements contesting plaintiff's title and share, it was held that a second appeal lay, as a question of title to land as between parties having conflicting claims thereto had been decided (*Sukurulla v. Bama Sundari Dasi*, 24 Calc., 404). So, in a case in which the plaintiff claimed the land as tenant and alleged that the defendant was his sub-tenant, but the defendant pleaded that he was the tenant of the land under the plaintiff's landlord, and the plaintiff failed to prove his title as tenant, it was held that a second appeal might lie (*Sitanath Pal v. Kartik Gharami*, 8 C. W. N., 434). But where the defendant sets up title of the plaintiff's landlord, who is no party to the suit, no second appeal lies (*Ram Mohan Mohish v. Badan Barai*, 8 C. W. N., 436). Where in a suit for rent the defendant claimed to hold under the plaintiff and his mother, under a right different from that set up by the plaintiff, it was held that it was not a question as between parties having conflicting claims thereto, and an appeal was barred (*Dinubandhu Nandi v. Nabin Chandra Kar*, 8 C. W. N., 437. See also *Ram Kanai Dass v. Fakir Chand Das*, 8 C. W. N., 438). An order setting aside or declining to set aside a sale in execution of a decree for rent, the decree-holder being the purchaser, falls within the proviso, as it decides a question relating to some interest in land as between parties having conflicting claims thereto, and is therefore appealable, although there could be no appeal in the suit on account of the prohibition contained in the section (*Kali Mandul v. Ramsarbaswa Chakravartti*, 32 Calc. 957 : 9 C. W. N., 721 : 1 C. L. J., 476. See also *Ganga Charan Bhattacharya v. Sashi Bhushan Rai*, 1 C. L. J., 255, and *Safar Ali v. Raj Mohan Guha*, 1 C. L. J., 454). This sets aside *Mannohini Dasi v. Lakhi Narain Chandra*, (28 Calc., 116), in which the contrary view had been taken. The explanation added to the section by s. 46, Act I, B. C., 1907 and Act I, E. B. C., 1908 now sets aside this ruling. Where in a suit instituted by a co-sharer landlord, the question raised and decided was not merely the amount payable to the co-sharer, but whether he had a title to recover a particular share of the rents of a *mouzah*; held, that the suit came under the proviso to sec. 153 (*Puresh Mani Das v. Naba Kishor Lahiri*, 8 C. W. N., 193).

Questions of right to enhance or vary the rent of the tenant.—The law on this point according to sec. 102, Act VIII, B. C.,

of 1869 being the same as laid down in this section, a second appeal lay in a suit for rent below Rs. 100, in which the right to enhance had been determined (*Watson & Co. v. Ramdhan Ghosh*, 17 W. R., 496); but not where no such right had been decided (*Golak Chandra Datta v. Miah Rajah Mizi*, 17 W. R., 119). No appeal will lie merely because the rate of rent has been varied by the decision of the Court, unless the Judge has determined the right to vary the rent (*Watson v. Mohendro Nath Pal*, 23 W. R., 436). A rent suit in which the only question is whether the rent is to be paid in instalments cannot be said to involve a question of a right to enhance or vary the rent (*Piari Mohan Mukhurji v. Mudhab Chandra*, 23 W. R., 385), and in a suit on the basis of a *shironamah*, where the raiyat denied that he had executed that document and produced evidence to show that the rates mentioned in it were not correct, no question of right to vary the rent was held to be involved (*Nitressar Singh v. Jhoti Teli*, 23 W. R., 343).

Questions as to amount of rent annually payable.—Under sec. 102, Act VIII, B. C. of 1869, no appeal lay in cases in which merely a question as to the amount of rent payable was involved (*Haro Prasad Chakravartti v. Sridam Chandra Chaudhri*, 20 W. R., 15; *Harish Chandra Chakravartti v. Hari Bewah*, 20 W. R., 16; *Narabdessar Prasad Rai v. Jungli*, 24 W. R., 49). Now, an appeal will lie when such a question has been decided. But not if the suit has been decided before the passing of the Tenancy Act, though the appeal may have been preferred after that date (*Haro Sundari Debi v. Bhajohari Das*, 13 Calc., 86; *Satghari v. Majidan*, 15 Calc., 107); (see note to sec. 2 (4), p. 11). In a suit in which the amount claimed was less than Rs. 100 and in which the question was whether the plaintiff was entitled to collect a 10 as. or a 16 as. share of the rent, it was held that under the proviso to sec. 153 no appeal lay, inasmuch as no question of the amount of rent annually payable by a tenant had been decided. "We understand these words to mean," it was said, "the total amount of rent annually payable in respect of a *jama* or holding, and not the amount of rent which may be due to any particular co-sharer in the property" (*Prasanno Kumar Banurji v. Srinath Das*, 15 Calc., 231). But in a subsequent suit in which the plaintiffs claimed the sum of Rs. 15 as rent, and in which the defendant pleaded that there had been a division of the holding and that the plaintiffs were entitled only to Rs. 7-8, p. a., it was held that a question as to the amount of rent annually payable by a tenant was involved, and that an appeal lay (*Abhai Charan v. Sashi Bhushan Basu*, 16 Calc., 155). These conflicting decisions were referred to a Full Bench which affirmed the decision in the latter case, and ruled that the words "amount of rent payable by a tenant" occurring in the above section include the case of rent payable by a tenant

to one of the co-sharer landlords, who collects his rent separately (*Narain Mahtan v. Manofi Patak*, 17 Calc., 489). Where the question is whether the plaintiff is entitled to an 8as. or to a 16 annas share of the rent, no second appeal lies (*Fakir Mandal v. Arshad Molla*, 10 C. W. N., cclxxx). When a defendant pleaded that he was the tenant of a third person at a rate of rent lower than that claimed by the plaintiff, and the Court merely held that the defendant was plaintiff's tenant; *held* that no second appeal lay (*Baidya Nath v. Dhan Krishno Sarkar*, 5 C. W. N., 515).

In a suit in which a plaintiff claimed under a usufructuary mortgage to be entitled to the full rent of the tenure, viz., Rs. 17, p. a., but in which the Subordinate Judge had held that he was not entitled to this amount, but to a less amount, inasmuch as part of the tenure had been sold in execution of a decree for road cess, it was held that a second appeal lay, as a question of the amount of rent annually payable by the tenant had been decided in it (*Nobin Chandra Naskar v. Bansi Nath Paramanik*, 21 Calc., 722). In a suit for rent, which is really one for damages or compensation, in which the amount claimed is less than Rs. 100, a second appeal lies (*Chandi Charan Tarafdar v. Jogendra Chandra Chaudhuri*, 1 C. W. N., cxx). A party can prefer a second appeal in a suit for the recovery of rent, the value of which is less than Rs. 100, if a question of the amount of rent annually payable has been decided, even though the question has been decided in his favour (*Sripati Bhattacharji v. Kala Chand Ghosh*, 1 C. W. N., clxxxvii; *Rai Charan Ghosh v. Kumud Mohan Datta*, 1 C. W. N., 687; *Ala Bux v. Abdur Rahman*, 9 C. W. N., cxcix). But when the plaintiff cannot prove the rate of rent claimed by him, and a decree is given at the rate of rent admitted by the defendant, no question as to the amount of rent annually payable is decided and no second appeal lies (*Nehejaie v. Nanda Lal Banurji*, 1 C. W. N., 711). No second appeal lies, when the only issue decided is to whom the rent is payable (*Baidya Nath Bahara v. Dhan Krishna Sarkar*, 5 C. W. N., 515).

In a suit in which the plaintiff sued for arrears of rent as well as for cesses and dak tax, the total amount claimed being less than one hundred rupees, and the defendant pleaded that he was not liable for dak cess, and it was held by the Subordinate Judge that the defendant was not liable to pay dak cess, it was ruled that a second appeal lay, as a question of the amount of rent annually payable by the tenant had been decided (*Watson v. Srikrishna Bhunik*, 21 Calc., 132). In two cases (*Mohesh Chandra Chattopadhyaya v. Umatarra Debi*, 16 Calc., 638, and *Rajani Kant Nag v. Jugeshwar Singh*, 20 Calc., 254) it has been held that no second appeal lies in suits for cesses, in which the amounts claimed are less than one hundred rupees. In the latter case it was

observed that "no doubt the Act declares that in sections 53 to 68, both inclusive, and sections 72 to 78, both inclusive, 'rent' includes cesses, but we think these are enabling provisions, passed to extend the meaning of 'rent,' and it in no way interferes with the law refusing a right of appeal in suits below rupees one hundred in value, which law is made applicable to suits for cesses by section 47 of Bengal Act IX of 1880" But if the decision appealed against has decided whether such cesses are payable or not, a second appeal lies (*Debendra Prasad Ghosh v. Paresh Nath Mitra*, 4 C. L. J., 119). But see notes on "dak cess" and "cesses" to sec. 3 (5) and sec. 74, pp. 31, 32, 256 and 257. Rent, as defined in the Tenancy Act, does not include interest payable on an overdue instalment; so no second appeal lies in a suit for arrears of below Rs. 100 in value, when the only question decided was as to the amount of interest payable (*Kailash Chandra De v. Tarak Nath Mandal*, 25 Calc., 571 : I. C. W. N., lxiii; *Kripa Sindhu Mukhurji v. Jogendra Chandra Mukhurji*, 5 C. L. J., 78 n); and a question as to the instalments in which rent is payable, though it affects the amount of interest payable on the rent, is not a question "of the amount of rent annually payable" (*Rai Charan Ghosh v. Kumud Mohon Datta*, 25 Clac., 571 : 2 C. W. N., 297). See note, p. 33 But a question whether rent is payable in money or kind is such a question (*Apurba Krishna Rai v. Ashutosh Dutta*, 9 C. W. N., 122).

Powers of District Judge to set aside orders under the proviso to sec. 153.—The words "judicial officer as aforesaid" mentioned in the proviso to sec. 153 have reference to the "Judicial Officer" spoken of in clause (b) of the section and to such officer only. It follows that the District Judge possesses no revisional jurisdiction by virtue of that proviso in respect of the decrees and orders of a District Judge, Additional Judge, or Subordinate Judge referred to in clause (a) of the section (*Sankar Mani Debi v. Mathura Dhunipi*, 15 Calc., 327). An Additional Judge has no revisional powers under the proviso; for the section makes a distinction between a District Judge and an Additional District Judge (*Gaudna v. Jabanulla*, 5 C. W. N., xlviii).

High Court's powers of revision.—The High Court can, in a case in which no second appeal lies, interfere under sec. 622, C. P. C., and set aside the order of a District Judge in a suit for arrears of rent, when the District Judge has acted illegally in the exercise of his jurisdiction (*Jagabandhu Patak v. Jadu Ghosh Alkushi*, 15 Calc., 47). It can do so, when the District Judge has interfered with a judgment of a Munsif on a point of law (*Harananda Banurji v. Ananta Dasi*, 9 C. W. N., 492). When a Lower Appellate Court has not decided any such question as would make his judgment appealable, a second appeal is barred. If it had erroneously refused to exercise jurisdiction, the remedy is by

an application under sec. 622 (*Sarat Chandra Chonga v. Ramnidhi Mazumdar*, 2 C. L. J., 69 n; *Gopi Nath Dikpati v. Jadu Nath Mandal*, 3 C. L. J., 52 n). In two suits valued at less than Rs. 50, a Subordinate Judge set aside the decrees of the Court of First Instance : *held*, that the Subordinate Judge had no jurisdiction to hear the appeals, but his decision could only be set aside under sec. 622 (s. 115, Act V of 1908) (*Basiruddi v. Nalini Bhusan Gupta*, 6 C. W. N., lxxxviii).

When a Munsif made an order for the payment of rent decreed by instalments, *held* that he committed an error of law only and not an error in the exercise of this jurisdiction within sec. 622 (s. 115, Act V of 1908) (*Shib Narain Mukherji v. Baikantho Nath Isar*, 11 C. W. N., 857).

[153A.] Every application for an order under section 108 (O. IX, r. 13) of the Code of Civil Procedure to set aside a decree passed *ex-parte*, or for a review of judgment, under section 623 (sec. 114 and O. XLVII, r. 1) of the said Code, in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment ;

Deposit on
application to
set aside *ex-*
parte decree.

XIV of 1882.

V of 1908.

and no such application shall be admitted—

- (a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct ; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.]

This section has been inserted in the Act by sec. 47, Act I, B. C., 1907, and Act I, E. B. C., of 1908, at the instance of the Select Committee on the Bill, who say ;

“The conditions which apply under sections 149 and 150 to a plea by a tenant to the effect that the rent claimed is due to a third person or is in excess of the amount really due, should also attach to an application for the setting aside of an *ex-parte* decree under section 108 of the Code of Civil Procedure, for such applications are very often made with the sole object of delaying and obstructing the recovery of rent. A deposit of the decretal amount is required in the case of such an application under section 17 of the Provincial Small Cause Courts Act, 1887. We have inserted the new section 153A with the object of preventing vexatious applications for the purpose of delay, not only under section 108 of the Code of Civil Procedure, but also under section 623 of the same Code. We think that the tenant should be bound to deposit either the amount, if any, which he admits to be due, or such amount as the Court directs. The Court should be empowered to regulate the amount of the deposit after consideration of the statement of injury filed with the application. In all cases the Court should record its reasons for the order it passes, whether it requires or excuses a deposit.”

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following ; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following ; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

Date from which decree for enhancement takes effect.

“Agricultural year” is defined in sec. 3 (11). See note to that clause, p. 39.

Relief against forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under subsection (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

This section is based on section 14 of the Conveyancing and Law of Property Act, 1881 (Selections from papers relating to the Bengal

Tenancy Act, 1885, p. 204). Permanent tenure-holders and raiyats holding at fixed rates can be ejected on the second of the grounds mentioned in this section, but not on the first [secs. 10 and 18 (b)]. Occupancy and non-occupancy raiyats can be ejected on both the grounds [secs. 25 and 44 (b)].

Holders of service tenures are exempt from the operation of the section (*Bonerji v. Akbal Jamadar*, 1 C. L. J., 16 n).

A tenant holding under a lease of a permanent character has no power to make excavations of such a character as to cause substantial damage to the property demised, although by the terms of the lease he has power to make excavations (*Girish Chandra Chanda v. Sirish Chandra Das*, 9 C. W. N., 255).

Waiver of forfeiture by receipt of rent.—A landlord who has accepted rent from his tenant subsequently to the date of forfeiture must be held to have waived his right to ejectment (*Kali Krishna Tagore v. Fazal Ali Chaudhuri*, 9 Calc., 843). If he sues his tenant for rent due subsequently to the date of the forfeiture, he will similarly lose his right to eject (*Jageshari Chaudhrai v. Mahomed Ibrahim*, 14 Calc., 33). But he can sue for ejectment on further breaches of the conditions of the lease (*Duli Chand v. Meher Chand Sahu*, 8 W. R., 138). Receipt of rent is not in itself a waiver of every previous forfeiture; it is only evidence of a waiver (*Chandra Nath Misra v. Sardar Khan*, 18 W. R., 218).

Notice to pay compensation.—The words “in any case” in this section mean “in every case,” and the omission of a demand for compensation in a notice under the section renders the notice bad, and prevents a suit for ejectment under this section from being entertained. When the suit was for ejectment from certain land, but the plaint contained other prayers, namely, for a declaration that the defendant had no right to build houses on the land, and for an injunction on him to remove houses he had built thereon, and the suit for ejectment failed from insufficiency of the notice under sec. 155, it was held that the plaintiff was not entitled to the declaration or injunction as asked for (*Prasad Singh v. Ram Pratap Rai*, 22 Calc., 77).

A notice under this section calling on a tenant to fill up an excavation made in certain land or in the alternative to pay compensation is not bad in law (*Baidya Nath Pande v. Ghisu Mandal*, 30 Calc., 1063).

In a suit instituted under this section for ejectment, the claim must include all the lands comprised in the tenancy. If the claim is limited to a portion of the land *e.g.*, the portion covered by a building, the suit is badly framed and must fail (*Kamaleswari Prasad Singh v. Harballabh Narain Singh*, 2 C. L. J., 369).

Service of notice.—For the rules framed by the Local Government for the service of the notice referred to in sub-section 1 of this section, see rule 38 Chap. V, of the Government rules under the Act (Appendix I).

Co-sharer landlords may sue under clause (b).—In a suit for ejectment by one of two joint owners of certain *jote* land, which the tenant held under a *pattah*, which provided that he could not without the consent of the plaintiff cut the trees in the garden, excavate tanks and turn *dhosa* land into *jul*, and in which it was found that he had done all these things, it was held that the plaintiff was not barred from suing by the provisions of sec. 188 of this Act. “The right under which the plaintiff sues,” it was said, “is not a thing which she, as landlord, is under the Bengal Tenancy Act required or authorised to do. The suit is brought under the contract on breach of the conditions of a lease by the tenant” (*Haripria Debi v. Ram Chandra Mahanti*, 19 Calc. 541).

Limitation.—The period of limitation for a suit for ejectment of a tenant on the ground mentioned in clause (a) of this section is two years under art 32, Sched. II of act XV of 1877 (Sched I, Act IX of 1908) (*Soman Gope v. Raghubar Ojha*, 24 Calc., 160 : 1 C. W. N., 223). So, also, in a suit where the primary relief sought was a mandatory injunction directing the tenant to fill up a tank excavated by him in contravention of the terms of the tenancy and for damages and when only the secondary relief sought was ejectment (*Sarup Das v. Jageswar Rai*, 26 Calc., 564 : 3 C. W. N., 464). The period of limitation runs from the time when the landlord became aware of the misuse or breach complained of (*Govinda Chandra Basu v. Kamizuddin*, 9 C. W. N., ccxlv). The period of limitation for the ejectment of a tenure-holder or raiyat on the ground mentioned in clause (b) of this section, that is, on account of any breach of a condition in respect of which there is contract expressly providing that ejectment shall be the penalty of such breach, is one year (Art 1, Sched. III of this Act).

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding :—

- (a) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either

- to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ;
- (b) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value ;
- (c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage ;
- (d) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

This section introduces a rule in some respects resembling the English law of emblements. Under the old law, the effect of an order for ejectment was to dispossess the raiyat not only of the land but also of the

crop standing thereon (*Durjan Mahton v. Wazid Hussain*, 5 Calc., 135). The Rent Commissioners pointed out that "owing to there being no provision in the existing law regarding the away-growing crop, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation." A raiyat has, as a general rule, no right to the growing crop on the sale of his holding. It passes to the purchaser at the sale, except when it has been specially excepted by the notification of sale, or custom to the contrary has been proved (*Afatullah v. Dwarkanath Moitri*, 4 Calc., 814). But, as said by Sir Steuart Bayley, "when a raiyati holding is sold up, the raiyat gets the money, which includes the value of the crop on the ground." This section does not apply unless there is a decree for ejectment (*Ram Ranjan Chakravarti v. Janoki Nath Pal*, 4 C. W. N., lxiv).

157. When a plaintiff institutes a suit for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for
Court to fix fair
rent as alterna-
tive to eject-
ment.

Trespassers.—In strict law, trespassers should not be sued for rent but for damages for the use and occupation of the land (*Bhubin Mohan Basu v. Chandra Nath Banurji*, 17 W. R., 69; *Kailas Chandra Sarkar v. Umanand Rai*, 24 W. R., 412; *Krisna Gopal Mawar v. Barnes*, 2 Calc., 374; *Kali Krisna Tagore v. Izzatunissa*, 24 Calc., 557; 1 C. W. N., lxxviii). But under the old law it has been held in several cases that persons who make themselves tenants by use and occupation of land may be treated as such and sued for rent (*Nityananda Ghosh v. Krishna Kishor*, W. R., Sp. No., 1864, Act X, 82; *Lakhi Kant Das v. Samiruddin Laskar*, 13 B. L. R., 243; 21 W. R., 208; *Lalan Mani v. Sona Mani Debi*, 22 W. R., 334; *Sarnomayi v. Dinonath Gir*, 9 Calc., 908). Landlords may now treat trespassers as tenants at their pleasure (*Azim v. Ram Lal Saha*, 25 Calc., 324). Receipt of rent from a trespasser or suing him for rent will convert him into a tenant (*Mahomed Azmal v. Chandi Lal Pandi*, 7 W. R., 250; *Gudadhar Banurji v. Khettra Mohan Sarma*, 7 W. R., 460). But mere willingness to pay rent does not make a trespasser a tenant (*Lyons v. Betts*, 13 W. R., 94). Raiyats are not trespassers, though the title of the persons who let them into occupation of the land may have been defective (*Ramgat Pandi v. Rudha Prasad Singh*, 22 W. R., 195; *Mahima Chandra Saha v. Hazari Paramanik*, 17 Calc.,

45 ; *Binad Lal Prakash v. Kalu Paramanik*, 20 Calc., 708 ; *Azim v. Ram Lal Saha*, 25 Calc., 324), provided the tenants entered on the land in good faith (*Peari Mohan Mandal v. Radhika Mohan Hazra*, 8 C. W. N., 315 : 5 C. L. J., 9 ; *Upendra Narain Bhattacharya v. Pratab Chandra Pradhan*, 8 C. W. N., 320). See also notes, pp. 25, 56 and 157.

A trespasser will acquire title to land by adverse possession, if the rightful owner holds it under him as a tenant for the statutory period (*Secretary of State v. Krishna Mani Gupta*, 6 C. W. N., 617).

Ejectment of trespassers by co-sharers.—When a tenant has been put into possession of *ijmali* property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others ; but no person has a right to intrude upon *ijmali* property against the will of the co-sharers or any of them : if he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if some only wish to eject him ; and the legal means by which such a partial ejectment is effected is by giving the plaintiffs possession of their shares jointly with the intruder (*Radha Prasad Wasti v. Isaf*, 7 Calc., 414 ; *Haladhar Sen v. Gurudas Rai*, 20 W. R., 126 ; *Hamidunnissa v. Ismail*, 1 C. W. N., xciii). A decree for partial ejectment and joint possession can be made in favour of a co-owner of property (*Kamal Kumari Chaudhurani v. Kiran Chandra Rai*, 2 C. W. N., 229). This is the rule as regards trespassers or persons who are trespassers in relation to the co-sharer landlords who seek to eject them, and in such a case it is not necessary to bring a suit for partition against the other co-sharers (*Dilbar Sardar v. Hossein Ali*, 26 Calc., 553). A different rule has apparently been laid down by the Privy Council in the case of tenants in common who take exclusive possession of any portion of the common property and who in law are not trespassers. See *Watson & Co. v. Ram Chand Datta*, (18 Calc., 10), *Lachmessar Singh v. Manowar Hossein*, (19 Calc., 253) and *Madan Mohan Saha v. Rajab Ali*, (28 Calc., 223.)

Rulings under this section.—The provisions of this section apply only to agricultural land, and in a suit for rent, when no alternative claim is made for use and occupation, no damages for use and occupation can be decreed (*Rachha Singh v. Upendra Chandra Singh*, 27 Calc., 239. See also *Surendro Narain Singh v. Bhai Lal Thakur*, 22 Calc., 756.) The provisions of this section may be applicable, and a right to claim rent may, on a plaintiff's title being established, arise notwithstanding that his previous suit for rent was dismissed (*Dwarkanath Rai v. Ram Chand Aich*, 3 C. W. N., 266 : 26 Calc., 428).

A trespasser cannot be allowed to get possession of land to which he has no title upon which he may have made improvements and hold it

against the will of the landlord merely because he has been many years on the land. The owner of the land may eject, but may be bound to give him compensation if he looked on without giving the defendant due warning of his doing wrong (*Bahir Das Chakravartti v Nabin Chandra Pal*, 6 C. W. N., xxxii).

158. (1) [Subject to the provisions of section 111], the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely) :—

Application to
determine inci-
dents of ten-
ancy.

- (a) the situation, quantity and boundaries of the land ;
- (b) the name and description of the tenant thereof (if any) ;
- (c) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV (O. XXVI) of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 (O. XXVI, r. 9) of the said Code.

XIV of 1882.
V of 1908.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as a decree.

The words within brackets at the commencement of the section have been inserted by s. 48, Act I, B. C., 1907 and Act I, E. B. C., of 1908. See note to s. 111, p. 376.

Object of section.—This section is founded on section 10 of the North Western Provinces Rent Act (XII of 1881) and is intended to take the place of the suits for *puttahs* and *kabulyats* of the former law. The Rent Commission pointed out that “little use was made of these provisions by those for whose benefit they were intended.” The provisions of the present section were accordingly introduced with the view of supplying the want indicated by experience of some “means of obtaining an authoritative settlement of essential questions connected with the tenancy and in dispute between the parties thereto.”

What questions may be determined in applications under this section.—“Sec. 158 clause (d) lays down that a Court dealing with an application under sec. 158 is to determine the rent payable by the tenant at the time of the application. It, therefore, could not have been intended that in a case under this section the Court should pass a decree for enhancement which can ordinarily take effect from the beginning of the agricultural year next following, or from that of the year next but one following, the year in which the decree was passed . . . If a landlord seeks to enhance his tenant's rent, when no settlement proceedings are going on, he must institute a suit for the purpose, and cannot do so by means of an application under sec. 158” (*Rajeswar Prasad Singh v. Barta Koer*, 21 Calc., 807). In *Bhupendro Narain Dutta v. Nemai Chand Mandal*, (15 Calc., 627) it was held that in a proceeding under sec. 158 it is open to a petitioner, if he acknowledges the opposite party to be a tenant, to dispute the validity of a lease under which the alleged tenant is holding, and it is open to the Court to determine that question. But this decision was dissented from in the Full Bench case of *Debendro Kumar Bandopadhyaya v. Bhupendro Narain Dutta*, (19 Calc., 182), in which it was held that an application under sec. 158, which under colour of asking for the determination of the incidents of a tenancy really seeks to set aside the lease under which the tenant came into possession, does not come within the scope of the provisions of this section. It was said by the majority of the Judges who decided this case that “the object of this section is to enable the Court to ascertain what are the existing arrangements between a landlord and his tenant, and not to enable the Court in effect to make a new contract for parties between whom no contract was

in existence at and before the date of the application." The object of section 158 is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in clauses (a), (c) and (d). Though clause (b) does authorize the Court to determine the name and description of the tenant, this was not intended to, and does not, authorize the Court to decide conclusively disputes as to who is the tenant or in occupation of the land. Such an issue can only be decided collaterally, and does not arise between the parties in such a manner as to make the decision upon it *res judicata* between the parties in a subsequent regular suit (*Piari Mohan Mukhurji v. Ali Sheikh*, 20 Calc., 249). In a proceeding under sec. 158, in which an enquiry had to be made as to the boundaries of the tenants' holdings, the Amin took evidence as to the standard measure of the district, and it was held that this evidence had been rightly admitted and acted upon (*Deoki Singh v. Seo Gobind Sahu*, 17 Calc., 277). The question whether a holding is transferable cannot be gone into under sec. 158 (*Purna Rai v. Banshidhar Singh*, 3 C. W. N., 15). In a proceeding under s. 158, the Court has no jurisdiction to assess additional rent for excess lands found to be in the occupation of the tenant, its function being limited to recording the existing rent payable by the tenant at the time of the application (*Srinarain Thakur v. Luchmeswar Singh*, 6 C. W. N., 592).

Co-sharer landlords.—An application under this section cannot be made by one of several joint landlords. Such an application is a thing which the landlord is authorized to do under the Bengal Tenancy Act and under that Act alone. It follows that when there are two or more joint landlords, the application must be made by all of them acting together. It is not a sufficient compliance with the provisions of sec. 188 to make the landlords who refuse to join, parties to the proceedings (*Mahib Ali v. Amir Rai*, 17 Calc., 538).

Applications against more than one tenant.—This section does not authorize one application being made against a number of tenure-holders, having separate and distinct tenures. The procedure is by separate applications against each (*Golap Chandra Naulakha v. Ashutosh Chaturji*, 21 Calc., 602). But one application may be made in respect of several holdings, when they are held by one tenant and under s. 647, Civ. Pro. Code, the provisions of the Civil Procedure Code are applicable to proceedings under this section (*Dijendra Nath Rai v. Sailendro Nath Rai*, 24 Calc., 197 : 1 C. W. N., 236).

Commissions.—See the Government Notification regarding the rank of the Commissioners, printed at p. 140, and the Board of Revenue's Circular as to the cost to be incurred in making local enquiries, printed at pp. 140, 141. They are both applicable to enquiries under s. 158 (2) as well as under s. 31 (b).

[CHAPTER XIII.]

SUMMARY PROCEDURE FOR THE RECOVERY OF
RENTS UNDER THE PUBLIC DEMANDS
RECOVERY ACT, 1895.

158A. (1) Any landlord whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained, may apply to the Local Government, through the Collector of the district in which his land is situate, for the application of the procedure prescribed by the Public Demands Recovery Act, 1895, to the recovery of the arrears of rent which he alleges are, or may accrue, due to him for lands in such area.

Recovery of
arrears by the
certificate pro-
cedure in cer-
tain areas.

Ben. Act I of
1895.

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed, the landlord may make a requisition in writing, in the Form prescribed, to such Revenue-officer as the Local Government may appoint, for the purpose of this section, to perform the functions of a Certificate Officer under the Public Demands Recovery Act, 1895, for the recovery of

Ben. Act I of
1895.

any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it, in accordance with the provisions of sections 51 and 52 (O.VI, rr. 14, XIV of 1882. 15) of the Code of Civil Procedure as to V of 1908. the verification of plaints; and there shall be payable in respect of every such requisition a Court-fee of the same amount as is payable VII of 1870. under the Court-fees Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such requisition.

(5) On receipt of such requisition the Revenue-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, issue certificates in the Form prescribed therefor for the recovery of the arrears alleged to be due,

and any such certificate shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court passed in a suit for the recovery of rent, and the provisions of Chapter XIV shall, so far as may be practicable, be applicable to all proceedings for the execution of such certificate :

Provided that—

(a) no certificate shall be issued for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in a Civil Court for the alteration of the rent payable by the tenant or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made

under sub-section (3) the arrears of rent sought to be recovered have accrued ; and,

(b) if after the issue of a certificate it is found that such a suit has been instituted in a Civil Court before the issue of the certificate, such certificate shall be cancelled.

(6) The following provisions of the Public Demands Recovery Act, 1895, shall, so far as they are applicable, apply to the proceedings for the execution of all certificates for the recovery of arrears of rent issued under sub-section (5), namely :—

Ben. Act I of
1895.

the proviso to sub-section 1 of section 7, and sections 10 to 17 (both inclusive), and 22 to 33 (both inclusive).

(7) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3) ;

and, subject to the provisions of section 15 of the Public Demands Recovery Act, 1895, no tenant shall, after the issue of any certificate against him under sub-section (3), institute a suit in, or apply to, a Civil Court for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was issued have accrued.

Ben. Act I of
1895.

(8) The word “landlord” in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or

their share or shares of the rent separately, and, where the Revenue-officer issues a certificate on the requisition of one or more such co-sharer landlords he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.]

This Chapter has been added to the Act by sec. 49, Act I, B. C., of 1907, and Act I, E. B. C., of 1908.

Section 158A contains the most novel of the provisions introduced into the Tenancy Act by the amending Act of 1907. Its genesis is explained in the Notes on Clauses of the Bill of 1906 as follows :

“The provision of a summary procedure for the recovery of rents has for many years been urged upon the Government by landholders. The delay and expense caused by the present system are admitted, but hitherto no scheme, which has been put forward, has commended itself. The fact that records-of-rights have now been prepared for large areas in the province justifies a reconsideration of the matter. Where a record-of-rights has been prepared and is periodically revised or maintained, the annual demand due from each individual raiyat is accurately known. The only question at issue in a rent suit will be the amount due from the raiyat for the period for which rent is claimed in the suit. If the landlord's accounts and collection papers are properly maintained, and if proper rent-receipts in foil and counterfoil are habitually kept and given as required by law, this will, in the great majority of cases, be an easy matter to determine. It is therefore proposed that in areas in which a record-of-rights has been prepared and published and is periodically revised, the Local Government should take power to allow the recovery of arrears of rent by the application of the procedure prescribed by the Public Demands Recovery Act, 1895, in the case of those landlords to whom, in the opinion of Government, this privilege may safely be conceded. It is further proposed that the issue of certificates should be entrusted to a Revenue Officer, who shall have power to inspect the landlord's rent-rolls, accounts and collection papers, and to compare the receipts given to the raiyats with the counterparts kept by the *zamindar*, and to test their agreement with entries in the accounts. The conditions under which the summary procedure may be applied will thus resemble those under which it is extended to Government estates and estates under the Court of Wards, for the demand of each individual raiyat will be accurately known and the landlord's accounts and collection papers will be subject to inspection by a Government officer. If it is possible, with safety, to reduce the expense of rent-suits, the results will be beneficial to landlords and tenants alike, and it is expedient, therefore, that a trial should be given to the scheme provided for in the clause, subject to the safeguards therein laid down.”

The Select Committee in their Report say : —

“The opinions received from the various Associations consulted evince some degree of opposition to this clause. The landlords, while ready to welcome any change in the procedure which will expedite the recovery of rent, do not approve of the safeguards and restrictions with which it is now proposed to surround the extension of the Certificate Procedure for this purpose. Some of them appear to fear that the provisions of the new section 158A will give too much power to the local officers. We understand, however, that the clause is intended to be purely an experimental measure, its main object being to introduce into the rent law of Bengal a principle which has not existed there before. It is necessary to be cautious in its application, and to make sure that it does not prove an instrument of oppression of the tenants. We hope that the provision may prove a great inducement to landlords to manage their estates properly, and to maintain their rent accounts in a correct and intelligible manner. It is probable that, after some experience has been gained of the working of the proposed provisions, it will be possible to introduce a measure more general in scope and more detailed in character. On this assumption, we have contented ourselves with modifying the clause as drafted, so as to provide a tentative but workable system.

Sub-section (1).—The word “maintain” should be substituted for the words “periodically revised.” At present no scheme for periodical revision has been worked out, and it is not advisable to make any entry in the subsection which might bind the Government to a particular scheme. We have added the words “or may accrue,” since the application will be for the recovery of future as well as of past arrears.

Sub-section (2).—The provision that no reasons need be given by the Local Government for any conditions it imposes, or for its refusal or withdrawal of the right, has been objected to. At the present stage, it would, in our opinion, be inadvisable to leave any chance of the exercise of its discretion by the Local Government being questioned. We understand that the sole ground for consideration by the Local Government will be the landlord's conduct as a landlord.

New sub-sections (3) and (4).—The clause as it stands in the Bill as introduced makes no provision for the making of a requisition for issue of a certificate by the landlord, nor does it prescribe the court-fee payable. We have supplied the defect, following section 9 (2) of the Public Demands Recovery Act, 1895.

It may be assumed that care will be taken in selecting the officers who are to exercise the powers under the section, but we consider it best to assure this by specifically declaring that the Certificate Officer is to be especially appointed by the Government. Ordinarily, we think such powers should be conferred on the officer who is entrusted with the maintenance of the record.

New sub-section (5).—In order to make the privilege of being able to recover rent by the certificate procedure of real value, the certificate should

have the effect of a decree in a rent-suit. We have amended the sub-section accordingly.

New sub-section (6).—It is not necessary to make the provisions of sections 19, 20 and 21 of the Public Demands Recovery Act applicable, but sections 24, 27 and 28 contain provisions which seem to be required.

New sub-sections (7) and (8) (1).—We have made amendments, in order to prevent any conflict of jurisdiction between the Civil Courts and the Revenue Officer in areas where the provisions of this section are in force.

New sub-section (9) (2).—We propose to limit the application of the clause to a sole landlord, or to such co-sharer landlords as collect their shares of the rent separately. It would obviously be impossible in the case of joint landlords to let one of several collect by certificate, while the rest have recourse to the Civil Court. As the certificate will have the force of a decree in a suit for arrears of rent, it is necessary that where one of several co-sharer landlords who collect their shares separately applies for the issue of a certificate against a tenant of all the co-sharers, the remaining co-sharers should have notice of the fact."

(1) Sub-section (8) as framed by the Select Committee has been converted into the provisions (a) and (b) to sub-section (6)

(2) The sub-section referred to in the Select Committee's report as new sub-section (9) is now sub-section (8) of the section.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

Extended to the districts of Cuttack, Puri and Balasore (Not., Jany. 3rd 1907.)

[158B.] (1) Where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, or of a decree for damages under section 186A, the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser, provided that the decree in execution of which it has been sold has been obtained by—

Passing of
tenure or hold-
ing sold in exe-
cution of de-
cree.

- (a) a sole landlord ; or
- (b) the entire body of landlords ; or
- (c) one or more co-sharer landlords, who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit.

(2) When one or more co-sharer landlords, having obtained a decree in a suit framed under sub-section (1) or under section 148A applies, or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.]

This section has been added to the Act by s. 50, Act I, B. C., of 1907 and Act I, E. B. C., of 1908. The object is to counteract the effect of the ruling in the case of *Jogendra Nath Ghosh v. Pabai Chandra Ghosh*, (8 C. W. N., 472), and to provide that in execution of a decree obtained

by a co-sharer landlord in a suit passed under s. 148A, the tenure or holding shall pass. It enacts that notice of the application for execution shall be given to the remaining co-sharers so that they may apply for a rateable distribution of the surplus sale proceeds—See new provisions added to s. 169 and notes to ss. 148A, 188A, and Sched. III, arts. (2) and (6).

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as “protected interests,” but with power to annul the interests defined in this Chapter as “incumbrances :”

General powers of purchaser as to avoidance of incumbrances.

Provided as follows :—

- (a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;
- (b) the power to annul shall be exerciseable only in manner by this Chapter directed.

✓ When the interest of a lessee in an undivided share in several parcels of land is sold in execution of a decree for rent, the purchaser is not the purchaser of a holding within the meaning of this section and is not entitled to annul incumbrances under sec. 169 (*Asadullah v. Sagun Mullah*, 6 C. W. N., lxxxiv).

Patni taluks.—Under sec. 195 (c) nothing in this Act affects any enactment relating to *patni* tenures, in so far as it relates to those tenures. *Patni taluks* are, therefore, still saleable under Reg. VIII of 1819 (*Gyanodu Kanth Rai v. Bramomayi Dasi*, 17 Calc., 162), and Act VIII, B. C., 1865. But the provisions of this Act, so far as they do not interfere with the *patni* law in respect of *patni* tenures, apply to them, (*Durga Prasad Bandopadhyaya v. Brinduban Rai*, 19 Calc, 504), so that the landlords of *patni taluks* may also sell them under the provisions of this Chapter in execution of decrees for arrears of rent, if they please. The *patnidar* is personally liable for the rent, and a transferee of a fractional share of a *patni* is liable for the rent severally and jointly with the registered tenant if the landlord chooses to recognize him as one of the joint-

holders of the *patni*, and he is also liable for the entire rent of the *patni* (*Sourendro Mohun Tagore v. Sornomoyi*, 26 Calc., 103).

What passed at a sale for arrears under the former law.—

In execution of a decree obtained against the tenant whose name was registered in the landlord's *serishtah*, the whole tenure might be sold, though others recognized by the *zamindar* as his tenants might be interested in the lease. (*Hari Charan Basu v. Meherunissa*, 7 W. R., 318; *Forbes v. Pratap Singh*, 7 W. R., 409; *Alimudin v. Sabir Khan*, 8 W. R., 60; *Bhobo Turini Dasi v. Prasunomoyi Dasi*, 10 W. R., 304; *Fatima Khatun v. Collector of Tipperah*, 13 W. R., 433; *Sadhan Chandra Basu v. Guru Charan Basu*, 15 W. R., 99; *Ghulam Chandra De v. Nadiyar Chand Adhikari*, 16 W. R., 1; *Bissessar Lal Sahu v. Lachmessar Sing*, 5 C. L. R., 477; L. R., 6 I. A., 233). Where an under-tenure was sold in execution of a decree, which had been passed in the terms of a compromise effected between the landlord and all the sharers in the tenure but one, and the representative of the latter sought to assert his right to his share against the auction-purchaser, it was held that in a sale under Act VIII of 1869, a tenure is sold outright, and that this tenure did not pass to the auction-purchaser with any incumbrances (*Girish Chandra Ghosh v. Kali Tara*, 25 W. R., 395). Even though the sale proceedings specified that the rights and interests of certain parties were sold, yet the tenure itself was sold and all the co-sharers were jointly liable (*Alimudin v. Sabir Khan*, 8 W. R., 60). But in *Dwarkanath v. Alok Chandra Sil*, (9 Calc., 641), it was held, on a construction of a sale-certificate and a proclamation of sale purporting to be under secs. 59 and 60 of the Rent Act, VIII of 1869, that what passed by the sale was not an under-tenure but merely the right, title, and interest of the judgment-debtor,—the declaration of a sale proclamation not being by itself sufficient to override the description of the property in the body of the document. Where a widow's life interest is sold for arrears of rent, it is not merely the widow's life interest that is transferred, but the property itself, and the reversionary heir cannot follow the estate after her death (*Tilak Chandra Chakravarti v. Madan Mohan Jogi*, 12 W. R., 504; *Mohima Chandra Rai v. Ram Kishor Acharji*, 23 W. R., 174; 15 B. L. R., 142; *Baijan v. Brij Bhukan Lal Awasti*, 1 Calc., 133; 24 W. R., 306; L. R., 2 I. A., 275; *Anand Mayi v. Mahendro Narain Das*, 15 W. R., 264). A *zamindar* who has obtained a decree for arrears of rent of a transferable tenure is entitled to sell the tenure, and a person, who has obtained a transfer of such tenure, which he has not registered, and cannot show a sufficient cause for not registering, is bound by the sale, and cannot set up a title, which he has acquired by a previous sale. (*Sham Chand Kundu v. Braja Nath Pal*, 21 W. R., 94; 12 B. L. R., F. B., 484). A decree for rent

obtained by a landlord against his registered tenant renders the tenure comprised in the decree liable for sale, although such tenure may have passed into other hands than those of the judgment-debtor (*Rash Bihari Bandopadhyaya v. Piari Mohan Mukerji*, 4 Calc., 346). The plaintiff purchased under a private conveyance from the registered tenant a permanent transferable interest in land such as is described in sec. 26 of Bengal Act VIII of 1869, but no notice of the transfer was given to the *samindar*. The *samindar* subsequently brought a suit against the tenant for arrears of rent, and obtained a decree, in execution of which he caused the tenure to be sold, and himself became the purchaser. The plaintiff took proceedings under sec. 311 of Civil Procedure Code to set aside the sale; but his application was rejected on the ground—an erroneous one—that he was not a proper party to take such proceedings, and he did not appeal against the order rejecting it. It was held that a suit brought against the *samindar* and tenant to set aside the sale was in the absence of fraud not maintainable. The plaintiff might have satisfied that rent-decree and so prevented the sale, or he might have appealed against the order rejecting his application to set it aside; but having done neither, and the *samindar* having had no notice of the transfer, the plaintiff was not entitled to treat the proceedings in the rent suit as a nullity, on the ground that he was not a party to the suit (*Panyé Chandra Sarkar v. Har Chandra Chaudhuri*, 10 Calc., 496).

When two persons, B and I were registered tenants, and on B's death no one was registered in his place, and a suit for arrears of rent was brought against the widow and the executors of the sole surviving tenant, it was held in view of sec. 26 of Act VIII of 1869, B. C., that the *samindar* was not bound to look for his rent beyond the representative of the surviving registered tenant and that the entire tenure passed by the sale in execution of a decree for arrears of rent obtained against the representative of the surviving registered tenant. It was held further that when the sale proclamation distinctly set out that the sale would be held according to the provisions of sec. 59 of Act VIII of 1869, and the property advertised was the tenure, and the property sold was the tenure, the mere insertion of a statement that the sale was of the rights and interests of the judgment-debtor would not have the effect of limiting the sale to such rights and interests and not extending to the tenure itself (*Nazir Mahomed Sarkar v. Girish Chandra Chaudhuri*, 2 C. W. N., 251). If a landlord has recognised a transferee of the tenancy as his tenant, he cannot sell the tenancy for arrears due from the recorded tenant (*Amrita Lal Basu v. Saurabi Dasi*, 2 W. R., Act X, 86; *Miah Jan v. Karuna Mayi Debi*, 8 B. L. R., 1; *Mozon Molloh v. Dula Ghazi Kulan*, 12 B. L. R., 492, note; *Ram Kishor Achurji v.*

Krishna Moni Debi, 23 W. R., 106). But if in execution of a decree for arrears of rent, the right, title and interest only of the judgment-debtor is attached and sold under Act VIII of 1859 (the old Civil Procedure Code), then, the whole tenure does not pass, as it would have done, had the sale taken place in accordance with the provisions of sec. 59, Act VIII, B. C., of 1869 (*Dular Chand Sahu v. Lal Chabil Chand*, L. R., 6 I. A., 47 : 3 C. L. R., 561).

When the decree for arrears of rent had been obtained by a co-sharer in a joint undivided estate, dependent *taluk* or other similar tenure, then under sec. 64 of Act VIII, B. C., of 1869, the under-tenure could not be sold until the moveable property of the judgment-debtor had been sold and proved insufficient to satisfy the decree. In that case, the under-tenure could be sold, not under sec. 59 of the Act, but under the ordinary procedure of the Court, and such sale had the effect of a sale of immoveable property held in execution of a decree, not being for arrears of rent payable in respect thereof, that is, of an ordinary money decree. In these circumstances, only the right, title and interest of the judgment-debtor passed by the sale (*Ranjiban Chaudhuri v. Piari Lal Mandal*, 4 W. R., Act X, 30 ; *Mritanjai Chaudhuri v. Khettra Nath Rai*, 5 W. R., Act X, 71 ; *Nundo Lal Rai v. Guru Charan Basu*, 15 W. R., 6 ; *Ghulam Chandra De v. Nadiar Chand Adhikari*, 16 W. R., 1 ; *Miajan v. Karunamayi Debi*, 8 B. L. R., 1 ; *Mohendra Kumar Datta v. Hira Mohan Kundu*, 7 Calc., 723 ; *Krishna Chandra Ghosh v. Raj Krishna Bandopadhyay*, 12 Calc., 24 ; *Bhaba Nath Rai v. Durga Prasanno Ghosh*, 16 Calc., 326), and so, if the rights and interests of the judgment-debtor had already been sold at a prior execution sale, the purchaser took nothing (*Daulat Ghazi Chaudhuri v. Manwar*, 15 W. R., 341 ; *Girish Chandra Mitra v. Jhaku*, 17 W. R., 352 : 12 B. L. R., 488, note). But in one case, in which a judgment-debtor was alone registered in the *samindar's sherista* as owner of a tenure, and his two brothers, who were joint in estate with him, were entitled each to an equal share with him in the tenure, it was held that a sale which took place in execution of the decree for arrears of rent obtained by a co-sharer only in the *samindari* had passed the whole tenure, and not merely the interest of the judgment-debtor (*Jeo Lal Singh v. Ganga Prasad*, 10 Calc., 996). In this case, however, the judgment-debtor was the manager of the family, and it was said that he had been sued as representing the ownership of the whole tenure, so it was just and equitable that the sale, although purporting to be of the right and interest of the judgment-debtor only, should operate as a sale of the tenure.

A share of tenure could be sold.—A share of an under-tenure can be sold under sec. 64 of Bengal Act VIII of 1869, so as to render the

sale binding upon the judgment-debtor, and there is no substantial difference between the sale of a portion of an under-tenure under that section and under the Civil Procedure Code (*Ashanullah v. Rajendra Chandra Rai*, 12 Calc., 464). But the purchaser must take his position as being jointly liable for the rent with the other under-tenants (*Gobind Chandra Rai v. Ram Chandra Chaudhuri*, 22 W. R., 421), and he does not acquire the property with the privileges attaching to the purchase of an entire tenure, *i. e.*, free of incumbrances (*Reily v. Har Chandra Ghosh*, 9 Calc., 722).

To make a tenure liable to sale in execution for arrears of rent under Act VIII of 1869 all the co-sharer landlords must be made parties to the suit : when this is not done, only the right, title and interest of the judgment-debtor will pass. When a suit was brought by some only of several co-sharer landlords against a Hindu lady who had succeeded her father to the tenure, for the recovery of rent which had accrued due after her father's death ; *held*, that the liability for the debt was personal and did not attach to the reversion, and a sale held in execution of a decree obtained by the landlords in the suit passed only her limited interest in the tenure to the purchaser (*Jiban Krishna Rai v. Braja Lal Sen*, 7 C. W. N., 425 : 30 Calc., 550.)

What now passes at a sale in execution of a decree for arrears of rent.—It is clear that the whole tenure or holding now passes at a sale held in execution of a decree for arrears of rent, subject to the "protected interests" and "incumbrances" referred to in sec. 159. But a sale held in execution of a decree obtained by a co-sharer landlord apparently does not pass the tenure or holding, but only the right, title and interest of the judgment-debtor in consequence of the provisions of sec. 188 of this Act (*Beni Madhub Rai v. Jaod Ali Sarkar*, 17 Calc., 390 ; *Durga Charan Mandal v. Kali Prasanna Sarkar*, 26 Calc., 727 : 3 C. W. N., 586 ; *Sita Nath Chaturji v. Atmaram Kar*, 4 C. W. N., 571 ; *Sadagar Sarkar v. Krishna Chandra Nath*, 26 Calc., 937 ; *Narain Uddin v. Srimanta Ghosh*, 29 Calc., 219). The law on this point is, however, changed by Act I, B. C., 1907. See notes to ss. 148A, pp. 471, 472, and 158A, pp. 500-502. When by private arrangement amongst co-sharers one of them is in exclusive possession of a certain portion of *ijmuli* land, a purchaser of the right, title and interest of the latter is entitled to be placed in the same position as the vendor (*Kumudini Mazumdar v. Rasik Lal Mazumdar*, 11 C. W. N., 517). When a tenure is sold in execution of a mortgage decree, the rent being under sec. 65 a first charge upon it, it passes to the purchaser subject to this charge, and can be sold in execution of the decree for the rent which accrued due previously to the date on which the sale was confirmed (*Maharani Dasya v. Harendra Lal Rai*, 1 C. W.

N., 458). But when a tenure is sold in execution of a rent decree, it passes to the purchaser free of all liability created upon it by the default of the previous holder, and so cannot be resold for any arrears that accrued due before the date of sale (*Faiz Rahman v. Ram Sukh Bajpai*, 21 Calc., 169; *Ram Chandra Sadhu Khan v. Samir Ghazi* 20 Calc., 25). This has also been held under the former law (*Latifan v. Miahjan*, 6 W. R., 112; *Pran Gaur Mazumdar v. Hemanta Kumari Debi*, 12 Calc., 597). The same rule was laid down in *Ram Saran Poddar v. Mahomed Latif*, (3 C. W. N., 62) in which it was further decided that the plaintiff who had purchased at the second sale for arrears of past years, and who had consequently acquired no title in the holding, was yet entitled in equity to recover from the landlord, defendant, the purchase money paid by him without instituting a separate suit against him for the recovery of damages.

But when a tenure or holding was sold in execution of a decree for rent with notice that it was saddled with liability for arrears of rent for a period anterior to the date of sale; *held*, that the purchaser was liable for the rent of such period (*Haradhan Chatteraj v. Kartik Chandra Chattopadhyaya*, 6 C. W. N., 877). A sale of a tenure held in execution of a decree for road-cess passes the tenure free from all but registered and notified incumbrances under sec. 161 (*Nobin Chandra Laskar v. Bansinath Paramanik*, 21 Calc., 722). But if a sale be held in execution of a decree for road-cess against some only of the owners of the tenure, its effect is not to convey to the purchaser the whole tenure, but only the right, title and interest of the particular persons against whom the decree has been obtained (*Mahamand Chakravartti v. Bani Madhab Chaturji*, 24 Calc., 27). A certificate under the Public Demands Recovery Act can only be enforced against the person whose name is entered in such certificate as if it were a personal debt of his: so, where in execution of a certificate against the recorded tenant, the landlord put up the holding to sale, *held* that the right, title and interest of the recorded tenant alone passed (*Rupram v. Iswar*, 6 C. W. N., 302). In one case, however, *Jeo Lal Singh v. Ganga Prasad* (10 Calc., 996) was followed and it was held that the sale, though in terms a sale only of the right, title and interest of the judgment-debtor, really passed the right, title and interest not only of the registered tenant, but also of the unregistered co-owners whom he represented (*Nitayi Bihari Saha v. Hari Govinda Saha*, 26 Calc., 767). But in *Ashok Bhuaian v. Karim Baipari*, (9 C. W. N., 843), it was decided that the sale of a jote in execution of a decree for rent obtained against the recorded tenants does not pass the interest of the tenants whose names are not registered in the landlord's *sheristah*. So, where one of several joint tenants

executed a *kabulyat* in favour of the landlord and the other tenants acquiesced in the representation of the holding by the tenant who executed the *kabulyat*, and the landlord sued him only for the rent and in execution of that rent decree attached the entire holding, and the other tenants made no attempt to get themselves recognised or to pay the arrears; *held*, that the attachment covered the entire holding unless there was fraud on the landlord's part (*Rajani Kant Guha v. Uzir Bibi*, 7 C. W. N., 170). When an under-tenure had been sold in execution of three *ex parte* decrees for arrears of rent, and the decrees had not each and all of them been against each and all of the three owners of the under-tenure, but one of them was against the three owners, who all understood that they were judgment-debtors under the decree, it was held that the sale was a valid one and operated to transfer the under-tenure to the purchaser (*Tara Lal Singh v. Sarobar Singh*, 27 Calc., 407). But in *Annanla Kumar Naskar v. Hari Das Halldar*, (27 Calc., 545 : 4 C. W. N., 608) the sale in execution of a decree obtained against some of the heirs of the last recorded tenant was held not to pass the *jama*, but only the right, title and interest of the judgment-debtors, the landlord having for some time accepted rent from all the heirs of the deceased recorded tenant. Where certain co-sharer landlords instituted a suit for the rent of a jote, making all parties interested in the jote parties defendant and obtained a decree, a sale in execution of the decree passed the entire jote to the purchaser. But a sale in execution of a decree for rent obtained by the same landlords in a suit subsequently instituted against the purchaser, but after the latter had parted with his interest in the jote to a third party, did not affect the rights acquired by such third party by his purchase. The fact that such third party had not got his name registered in the *zamindar's sheristah*, in place of the first purchaser was immaterial, as at the second auction sale only the right, title and interest of the judgment-debtor was sold (*Umesh Chandra Rai v. Gour Lal Chaudhuri*, 10 C. W. N., 1042). A mortgagor does not represent the mortgagee, and the latter is not bound by a sale in execution of a rent decree obtained against the former (*Sashi Bhushan Guha v. Gagan Chandra Saha*, 22 Calc., 364). But see the definition of "registered and notified incumbrance" (sec. 161), and the case of *Nobin Chandra Laskar v. Bansi Nath Paramanik*, (21 Calc., 722) in which it was held that a usufructuary mortgage, which has not been registered and notified, is not "a registered and notified incumbrance." A tenure was transferred by a private sale in 1897. In 1902 the landlord sued the original tenant for arrears of rent, got a decree and brought the tenure to sale in execution. *Held*, that the purchase in 1897 having been registered in the landlord's *sheristah* under sec. 12 of the Act long before the institution

of the suit, and the arrears being for a period subsequent to the purchase, the landlords' suit was brought against the wrong party and would not affect the petitioner (*Ainaddi Sapui v. Aghore Nath Bose*, 1 C. L. J., 182). When a landlord and tenure-holders have divided a tenure by mutual agreement, the purchase of one of the divided shares must be regarded as that of an entire tenure (*Gopi Nath Biswas v. Radha Shyam Poddar*, 5 C. W. N., lxxx). Sec. 99 of the Transfer of Property Act applies to *zaripeshgi* mortgagees and a purchase of the mortgaged property by the mortgagee in execution of a decree for rent due by the mortgagor under a *katkina* lease of the property is absolutely void (*Sheodervi Tewari v. Ram Saran Singh*, 26 Calc., 164). The sale of a holding in execution of a decree for rent obtained by a landlord, who also holds a mortgage of the holding is void, and the purchaser at the sale acquires no title against another mortgagee of the holding, who has purchased it under a decree on his mortgage (*Basiruddi v. Kailash Kamini Devi*, 33 Calc., 113). One of several joint landlords brought a suit for arrears of his share of the rent of a certain occupancy holding against three persons who were the recorded tenants, but two of the recorded tenants had already transferred their interests to the plaintiff: held, that the purchaser at the sale purchased only the right, title and interest of the judgment-debtors, and, as two of these had no interest at the date of the sale, the right of their transferee was not affected by it (*Afras Molla v. Kalsamunnissa*, 4 C. L. J., 68 : 10 C. W. N., 176). So when an *ijardar* in execution of a decree for arrears of rent in a suit brought by him after the expiry of his *ijara*, against the registered tenant, sold the right, title and interest of the said tenant the rights of unregistered co-sharers of the tenant were held not to have passed (*Doorga Dhur Biswas v. Huro Mohini Dabee*, 13 C. W. N., 270. See also *Bijoy Sankar Sikdar v. Rajendra Kumar Basu*, 13 C. W. N., 746 : 9 C. L. J., 479). Nothing but the tenure in default can be sold. A claim which the judgment-debtor may have against the decree-holder cannot be sold (*Lachmipat v. Mandil Koer*, 3 C. W. N., 333).

The terms "right, title and interest" of the debtors, as used in a sale certificate and order, must be construed with reference to the circumstances under which the suit was brought, and the true meaning of the decree under which the sale took place as well as the proceedings leading up to sale. In a case where proceedings were taken under this Act and application was made for the simultaneous issue of the order of attachment and proclamation as provided in s. 163, what was intended to be sold was the entire tenure (*Akhai Kumar Sur v. Bijai Chand*, 29 Calc., 813). See "*Execution of decrees for arrears of rent*, p. 226."

Grounds on which a sale held in execution of a rent decree can be set aside.—If a sale takes place in execution of a

decree in force and valid at the time of sale, the property in the thing sold passes to the purchaser. If the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale, or the title of the purchaser (*Chundra Kant Sarmah v. Bissessar Sarmah*, 7 W. R., 312; *Rewa Mahton v. Ram Krishna Singh*, 14 Calc., 18 : L. R., 13 I. A., 106; *Mathura Mohan Ghosh v. Akhai Kumar Mitra*, 15 Calc., 557; and *contra*, *Bhulu v. Ram Narain Mukkurji*, W. R., Sp. No. 1864, 129). A *bona fide* sale under a decree is binding, notwithstanding that the decree may be set aside upon review (*Jun Ali v. Jan Ali Chaudhuri*, 10 W. R. 154 : 1 B. L. R., A. C., 56; *Piari Muni Dasi v. Collector of Birbhum*, 8 W. R., 300). No suit will lie to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent (*Durga Prasad Pal v. Jogesh Prakash Gangopadhyaya*, 4 W. R., Act X 38). But a sale in execution of a decree barred by limitation at the time of the sale is invalid (*Ghulam Asgar v. Lakhimani Debi*, 5 B. L. R., 68 : 13 W. R., 273), and a sale held under a decree passed by a Court without jurisdiction and reversed on that account is a nullity (*Jadu Nath Kundu v. Braja Nath Kundu*, 6 B. L. R., App., 90). The purchaser of an under-tenure may sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent, under Act X of 1859, on the ground that such decree was obtained by fraud subsequent to the purchase (*Ganga Das Datta v. Ram Narain Ghosh*, B. L. R., F. B., 625; *Nil Muni Banik v. Paddu Lochan Chakravartti*, B. L. R., F. B., 379; *Ram Sundar Paramanik v. Prasanna Kumar Basu*, B. L. R., F. B., 382; *Batulan v. Uziran*, 8 W. R., 300). A suit by an auction-purchaser to obtain *khas* possession of an under-tenure, which had been sold under Act VIII (B. C.) of 1869, was dismissed on the ground that the suit in which the *samindar* had obtained the decree was a fraudulent one, and the purchaser knew that it had been against the wrong party. In special appeal, the provisions of Act X of 1859 sec. 106, were pleaded in justification of the *samindar*; but it was held that he could not bring such a suit against a person other than the one whom he knew to be the proprietor of the under-tenure, and from whom for a series of years he had been receiving rent (*Nabin Chandra Sen v. Nabin Chandra Chakravartti*, 22 W. R., 46). The holder of an under-tenure, though his name has not been registered as the owner, may bring a suit to set aside a sale of the under-tenure, sold in execution of a decree for rent against the former owner, on the ground that the money due under the decree had been deposited before the sale (*Afsal Ali v. Gur Narain*, 6 W. R., Act X, 59 : B. L. R., F. B., 519). Some of the heirs of a deceased tenant not parties to the decree for rent in execution of which a sale has taken place may

sue to have it declared that the sale was fraudulent or did not affect their interests (*Jagan Nath Gorai v. Watson & Co.*, 19 Calc., 341). And a *quondam* judgment-debtor may sue to have a sale held in execution of the decree against him set aside, on the ground that the decretal amount had been paid to the *quondam* judgment-creditor out of Court before the sale (*Pat Dasi v. Sharu Chaudhary*, 14 Calc., 376). But in *Mathura Mohan Ghosh v. Akhai Kumar Mitra* (15 Calc., 563) it was pointed out that according to the ruling of the Privy Council in *Rewa Mahton v. Ram Krishna Singh*, (14 Calc., 18 : L. R., 13 I. A., 105) the sale could only be set aside in this case, if the auction-purchaser were a party to the fraud. In one case in which a plaintiff sued for possession of a holding, but it was decided that the sale at which he had purchased the holding, though held in execution of a decree for arrears of rent, was bad, as the landlord had previously sold the holding in execution of a money decree, it was said that the plaintiff was entitled to a refund of the purchase money from the landlord, and that a separate suit for the purpose was not necessary (*Ram Saran Poddar v. Mahomed Latif*, 3 C. W. N., 62). A person to whom a transferable occupancy holding was mortgaged before its sale in execution of a rent decree is a representative of the judgment-debtor within the meaning of sec. 244, C.P.C., and may apply to set aside the sale (*Nissa Bibi v. Radha Kishor Munikya*, 11 C. W. N., 312). After a judgment-debtor, with full knowledge of the execution proceedings and full opportunity of objecting that the holding is an occupancy-holding and non-transferable, fails to raise that objection at the time of the sale, it is not competent to him to resist the purchaser after the confirmation of the sale, and as between the purchaser and the judgment-debtor the title to the property vests in the purchaser on the confirmation of the sale. Where a settlement is made by the landlord with the auction purchaser of a non-transferable holding as soon as can be reasonably expected after the sale and when the landlord afterwards recognises the purchaser and receives rent from him, it is sufficient to render the sale valid in law (*Dwarkanath Pal v. Tarini Sankar Rai*, 11 C. W. N., 513).

"Incumbrances" and "registered and notified incumbrances."—These terms are defined in sec. 161, clauses (a) and (b). In *Titu Bibi v. Mohesh Chandra Bagchi*, (9 Calc., 683 : 12 C. L. R., 304) it was settled that under the former law under-tenures, which are "incumbrances" within the meaning of sec. 66 of Act VIII, B. C., of 1869, are not avoided by a sale of the parent tenure but are only voidable at the option of the purchaser. The object of making sub-leases and incumbrances voidable on the sale for arrears of rent is explained by the Rent Commissioners, at whose instance the provisions of this Chapter were introduced, to be that "the superior landlord's securities for his rent may not be impaired."

When a landlord in collusion with his tenant obtained a decree for rent and in execution thereof purchased the holding, the lien of a mortgagee under the tenant of a part of the holding should be held to continue to subsist upon the land, and the mortgagee would have the same right against the landlord as he would have against the mortgagor (*Ram Saran Das v. Ram Prokash Das*, 32 Calc., 283).

160. The following shall be deemed to be protected interests within the meaning of this Chapter :—

Protected in-
terests.

- (a) any under-tenure existing from the time of the Permanent Settlement ;
- (b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement ;
- (c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made ;
- (d) any right of occupancy ;
- (e) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer ;
- (f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is

sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

In the statement of Objects and Reasons for the Bill to amend the Tenancy Act (Selections from papers relating to the Bengal Tenancy Act, 1885, p. 206) it is explained that the first three of the interests referred to in this section are protected under a sale for arrears of revenue (see sec. 37, Act XI of 1859 and sec. 12 of Act VII, B. C., 1868) and, therefore, "would seem to be *a fortiori* entitled to protection under a sale for rent." The interests referred to in clauses (d), (f) and (g), it is pointed out, are protected in similar sales under the existing law, (see secs. 16 of Act VIII, B. C., of 1865 and 66 of Act VIII, B. C., of 1869 and *Nilmadhab Karmokar v. Shibu Pal*, 13 W. R., 410.) The interest referred to in cl. (e) is new and has been created by this Act. See sec. 46 (7).

Clause (c).—With clause (c) of this section should be read clause 4, sec. 167, of this Act which provides that "when a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this Chapter to avoid all incumbrances (see sec. 165) sue to enhance the rent of the land, which is the subject of the protected interest, unless it has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land." The benefit of the fourth exception to sec. 37, Act XI of 1859 (which corresponds to cl. (c) of this section), must be limited to improvements effected *bona fide* and to permanent buildings erected before the revenue sales, and should not be conceded to anything subsequently constructed, or which appears to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder, or by some previous occupier (*Azgar Ali v. Asmat Ali*, 8 Calc., 110). See also *Bul Chand v. Lathu*, (23 W. R., 387); and *Mokar Ali v. Shama Charan Das*, (3 C. W. N., lxiii), in which it has been ruled that a dwelling house to be exempted under sec. 37 of the Revenue sale law must be a dwelling house of a permanent character, and that mere huts would not come within that description. It is immaterial whether the lands on which buildings have been erected and gardens made were expressly leased for these purposes or not (*Bhago Bibi v. Ram Kant Rai*, 3 Calc., 293; *Govindo Chandra Sen v. Jai Chandra Das*, 12 Calc., 327).

Clause (d).—A raiyat holding at fixed rates does not after he has been in occupation for 12 years, become a “settled raiyat” of the village and thus acquire a right of occupancy, so that his interest is not a “protected interest” within the meaning of this section (*Bhut Nath Naskar v. Surendra Nath Dutt*, 13 C. W. N., 1025).

Clause (g).—A mortgage created by a *dar-patnidar* of his interest in the *taluk* does not amount to a “protected interest” (*Akhai Kumar Sur v. Bijai Chand*, 29 Calc., 813). Where raiyats having permanent interest in a holding sold a portion of it and the transferees again sold a portion of their purchased interest to one R, and R obtained settlement from the landlord; *held*, that the interest of the transferee was not an incumbrance, which could be avoided by a purchaser at a rent sale (*Baistab Charan Chaudhuri v. Okhil Chandra Chaudhuri*, 11 C. W. N., 217). A *patni kabulyat* contained the following clause: “If I should let out this *mahal* in *dar-patni* to any person, such *dar-patnidar* shall act according to the terms of my *kabulyat* ;” *held*, that these words did not amount to an express or implied permission to create a sub-tenure, and the knowledge of the proprietor of the creation of the sub-tenure and the acceptance by him of the rent of the *patni taluk* through the sub-tenure-holder were not sufficient to make the sub-tenure a protected interest (*Mahomed Ka'im v. Nafar Chandra Pal*, 9 C. W. N., 803 : 32 Calc., 911).

161. For the purposes of this Chapter—

(a) the term “incumbrance,” used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section ;

* Meaning of “incumbrance” and “registered and notified incumbrance.”

(b) the term “registered and notified incumbrance,” used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

[(c) the terms 'arrear' and 'arrear of rent' shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68.]

Clause (c) has been added to the section by s. 51, Act I, B. C., of 1907, and Act I, E. B. C., of 1908.

It will be seen that the purchaser at a sale under sec. 164, *i. e.*, at a sale of a tenure or holding at fixed rates, can annul all incumbrances, not being registered and notified incumbrances. A purchaser at a sale under sec. 165, *i. e.*, at an adjourned sale of a tenure or holding at fixed rates, and the purchaser at a sale under sec. 166, *i. e.*, at a sale of an occupancy holding, can annul registered and notified incumbrances.

Lease an incumbrance.—In sec. 161 of the Bengal Tenancy Act the word 'incumbrance' seems to be used as covering a lease. A lease, just as much as a sale, gift or mortgage, must come within the meaning of incumbrance (*Jogeshar Mazumdar v. Abid Mahomed Sarkar*, 3 C. W. N., 13).

Exchange of part of holding an incumbrance.—When the registered tenant of a holding has exchanged part of his holding with other persons, though the exchange has not been ratified by the landlord, the purchaser at a sale for arrears of rent cannot eject the occupiers of the land exchanged, without having taken proceedings to annul the incumbrance, as provided in section 167 (*Chundra Sakai v. Kali Prasanna Chakravarti*, 23 Calc., 254).

Mortgages which are not incumbrances.—A mortgage created by sec. 171 in favour of a person who pays the decretal amount and saves a tenure or holding from sale is not an incumbrance within the meaning of sec. 161 and cannot be annulled by a purchaser at a sale held under the provisions of this Chapter (*Pasupati Mahapatro v. Narayani Dasi*, 24 Calc., 537: 1 C. W. N., 519). A usufructuary mortgage which has not been registered and notified is not a registered and notified incumbrance (*Nobin Chandra Laskar v. Bansi Nath Paramanik*, 21 Calc., 722). When a mortgagee of a tenure has enforced his lien and obtained his decree, it is no longer an incumbrance on the tenure (*Abhai Kumar Sur v. Bijai Chand*, 29 Calc., 813).

Clause (c)—This clause sets aside, so far as sales in execution of rent decrees are concerned, the rulings, cited at p. 33, to the effect that interest is not rent. It further provides that damages awarded under sec. 68 (1) is also rent within the meaning of this Chapter.

Service of copy of incumbrance.—Sec. 176 provides that the registering officer shall, at the request of the tenant or person in whose

favour the incumbrance is created, notify it to the landlord by causing a copy of it to be served on him.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 [O.XXI, r. 11 (2)] of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

The High Court has framed the following rule under sec. 287 (O. XXI, rr. 66, 70.) of the Civil Procedure Code (Act V of 1908) :—

“Every person applying under sec. 162 of the Bengal Tenancy Act (VIII of 1885) for the simultaneous attachment and sale of a tenure or a holding of a raiyat holding at fixed rates, or applying only for the sale of such tenure or holding already under attachment, shall in such application specify the registered and notified incumbrances subject to which the tenure or holding is to be sold. Such specification shall be verified in the manner prescribed by the Code of Civil Procedure for the verification of plaints by the holder of the decree in execution of which the tenure or holding is to be sold, or by some other person (approved of by the Court), if the Court be satisfied that he is acquainted with the facts mentioned in it.” (*Calcutta Gazette of August 18th 1886, Part I, p. 939, and High Court's General Rules and Circular Orders (Civil), p. 32.*)

163. (1) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 (O.XXI, r. 17) of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment

Application for
sale of tenure
or holding.
XIV of 1882.
V of 1908.

Order of attachment and proclamation of sale to be issued simultaneously.
XIV of 1882.
V of 1908.

and the proclamation required by section 287 (O. XXI, rr. 66, 70) of the said Code.

(2) the proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 (O. XXI, rr. 66, 70) of the said Code, announce—

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(3) The proclamation shall, besides being made in the manner prescribed by section 289 (O. XXI, r. 67) of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(4) Notwithstanding anything contained in section 290 (O. XXI, r. 68) of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which

the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

Sub-section (3).—The landholder, decree-holder, is debarred from claiming an amount not mentioned in the sale proclamation (*Raj Narain Mitter v. Panna Chand Singh*, 30 Calc., 213). When a tenure or holding was sold with a notice that it was saddled with a liability for arrears of rent for a period anterior to the date of sale, held that the purchaser was liable for the rent of such period (*Haradhan Chatteraj v. Kartik Chandra Chatturji*, 6 C. W. N., 877).

Government notification under this sub-section.—The Local Government has issued the following notification under this sub-section :—

Under sec. 163 (3), Bengal Tenancy Act, the Lieutenant-Governor is pleased to direct that the proclamation referred to in that section as required by section 287 of the Civil Procedure Code, Act, XIV of 1882, shall, in addition to the places prescribed in sec. 163 (3) of the Bengal Tenancy Act, and in sec. 289 of the Code of Civil Procedure, be also published in the *mal kachari* or rent office of the estate, and at the local thana." (*Calcutta Gazette*, March 3rd, 1886, Part I, p. 142).

Stay of sale pending appeal.—A decree for arrears of rent is a decree for money and, therefore, the provisions of sec. 546, (O. XLI, r. 6 of Act V of 1908) Civil Procedure Code, which allow of a sale of immoveable property in execution of a decree for money being stayed until an appeal against the decree is disposed of, apply to sales in execution of rent decrees (*Banku Bihari Sanyal v. Shama Charan Bhattacharji*, 25 Calc., 322.)

164 (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise,

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sub-section (1).—The object of the provision that the tenure or holding is in the first instance to be put up to sale subject only to registered and notified incumbrances is to prevent sham incumbrances being fraudulently set up after the sale.

Meaning of Bidding.—In an unreported case, Appeal from Order No. 69 of 1887, *Nabo Kumar Mukherji v. Kishori Dasi*, decided by Petheram, C. J., and Ghose, J., on the 30th May, 1887, it was decided that a bidding, which is withdrawn before acceptance is not a bidding within the meaning of the section.

Sub-section (2).—The purchaser at a rent sale can after serving notice under section 167 maintain a suit for rent against the cultivating tenants who hold under an under-tenure-holder and is not to be relegated to a separate suit for determining whether the notice has been duly served : such a suit would contravene the provisions of Section 164 (2) (*Miajan v. Phuljan*, 11 C. W. N., ccxlviii).

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 (O. XXI, r. 67) of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement ; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

V of 1903.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

When there are several tenures held by the same tenant, the landlord may institute one suit for the rent of all the tenures, but he cannot put the tenures to sale in execution of the decree obtained in such a suit so as to enable the purchaser to avoid incumbrances. A sale under this Chapter can take place only when a separate decree has been obtained for the arrears of each tenure or holding, and the same is sold separately in execution of such a decree (*Hridai Nath Das v. Krishna Prasad Sircar*, 11 C. W. N., 497 : 34 Calc., 298 : 6 C. L. J., 153 ; *Baikantha Nath Rai v. Debendro Nath Sahi*, 11 C. W. N., 676).

A *zamindar* who after selling his *zamindari*, sues and obtains a decree for arrears accrued due before the sale, is still entitled to the first charge which prevails against the mere lien of a *darpatnidar* under clause (4) of sec. 13 of the Putni Regulation (*Moharaj Bahadur v. Forbes*, 35 Calc., 737 : 7 C. L. J., 652).

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this Chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Sub-section (1). Annulment of incumbrances.—The mode prescribed by section 167 is the only mode in which incumbrances can be annulled by purchasers of tenures and holdings for arrears of rent (*Sashi Bhusan Guha v. Gagan Chandra Suha*, 22 Calc., 364; *Chandra Sakhi v. Kali Prasanna Chakravarti*, 23 Calc., 256), even when the incumbrancer and the purchaser are the same person (*Golak Chandra Das v. Ram Sankar Dutta*, 4 C. W. N., 268). But this was dissented from in a latter case (*Mastulla Mandal v. Jun Mamud Sha*, 28 Calc., 12; 4 C. W. N., 735) in which it was decided that when the mortgagee of a property purchases it at a sale in execution of a rent decree under sec. 165, and takes out the balance of the surplus sale proceeds, and applies it *pro tanto* to the satisfaction of a mortgage

decree which he had obtained, his mortgage lien on the property is extinguished by his purchase, though he may not have taken steps to annul the incumbrance under sec. 167. A sale with power to annul incumbrances does not *ipso facto* cancel the incumbrances. Notice must be given according to the procedure laid down in section 167 (*Beni Prasad Sinha v. Rewat Lal*, 24 Calc., 746), within one year of the purchaser becoming aware of the incumbrance (*Gopi Nuth Biswas v. Radha Shyam Poddar*, 5 C. W. N., 1xxx). The service of the notice under sec. 167 is sufficient under sec. 164 to annul the incumbrance : it is not necessary to bring a regular suit to extinguish it, and a purchaser at a sale may give a valid notice under sec. 167, even though he may have transferred his rights in the property before the notice is given (*Piari Lal Rai v. Moheswari Debi*, 25 Calc., 551). An execution-purchaser of an occupancy holding who subsequently purchases the holding in execution of a decree for arrears of rent can by a notice under Section 167 annul a mortgage of the holding by the raiyat (*Surenbro Mohan Sing v. Binsidhar Marwari*, 12 C. W. N., 114). It is obligatory upon the purchaser to show that the notice under Section 167 has been served in the prescribed manner. The entries in the order-sheet are not *prima facie* evidence against the incumbrancer that the notice was served ; until notice has been properly served, the incumbrance subsists (*Radhay Koer v. Ajodhya Das*, 7 C. L. J., 262). The service of a notice under this section annulling a mortgage is no bar to the mortgagee making an application to set aside a sale of the tenure (*Brij Kumar Rai v. Dhanukdhuri Raut*, 10 C. W. N., 976). An under-raiyat's lease which is unregistered is not an incumbrance and need not be annulled under this section (*Piari Mohan Mukhurji v. Badul Chandra Bagdi*, 5 C. W. N., 310 : 28 Calc., 205).

In a suit for possession after annulment of an under-tenure under s. 167, absence of due service of notice on a person who in the suit disclaimed all interest therein, cannot prejudice the plaintiff. But if application for the issue of notice against some of the persons jointly interested in the incumbrance was not made within time, the whole suit must fail (*Delaney v. Rahamat Ali*, 32 Calc., 710).

The purchaser of an undivided share in lands leased to a raiyat, even in execution of a decree for rent, acquires no right to annul incumbrances (*Ahadullah v. Gagan Molla*, 2 C. L. J., 10).

S. 167 does not apply to a sale in execution of a rent decree of a portion only of a tenure or holding, and the auction-purchaser cannot proceed under that section to annul incumbrances (*Ram Kinkar Biswas v. Akhil Chandra Chaudhuri*, 11 C. W. N., 350), nor does it apply to a sale in execution of a decree for the rent of several tenures lumped up in one

suit (*Hridai Nath Das v. Krisna Prasad Sarkar*, 34 Calc., 298). When certain defendants annulled under this section a mortgage which they were under no obligation to pay off, it was held that they exercised only a statutory right, which can never be an equitable wrong or amount to fraudulent conduct (*Surendra Mohan Singh v. Bansidhar*, 11 C. W. N., cxcv).

A purchaser at a rent sale is entitled to priority over a purchaser at a sale under a previous mortgage decree and can recover possession after service of notice under this section (*Gopi Nath Mahapatra v. Kashi Nath Beg*, 13 C. W. N., 412).

This section applies where the incumbrancer is a third party, and not where the purchaser and the incumbrancer are the same person (*Hem Chandra Chaudhuri v. Tafazzal Hossain Khan*, 8 C. W. N., 332).

Collector.—A sub-divisional officer not specially appointed by the local Government to discharge the functions of a Collector under sec. 167, has no power to receive an application, nor has he jurisdiction to issue a notice annulling an incumbrance (*Mohabat Singh v. Umahil Fatima*, 28 Calc., 66).

There is no irregularity in the service of the notice, merely because the application was received by the Deputy Collector in charge and the notice was signed by a Deputy Collector "for the Collector" (*Mahomed Kazim v. Nafar Chandra Pal*, 9 C. W. N., 803 : 32 Calc., 911). But where the notice had been given by a Deputy Collector, and his action had been approved by the Collector after the lapse of one year, *held*, that the incumbrance had not been annulled, the notice by the Deputy Collector being invalid (*Ram Dhan De v. Surjo Narain Mukhurji*, 2 C. L. J., 99 : 9 C. W. N., lxxvii).

Sub-section (2).—Fees.—Fees for the service of the notice are to be levied in accordance with rules 1 to 4, Chapter VII of the Government Rules under this Act. The Board of Revenue have fixed no special fees for the service of the notice.

Sub-section (3).—Mode of Service.—For the mode of service of the notice of the incumbrance, see rule 3, Chap. I of the Government Rules under the Act.

Terms of notice.—No form of notice has been prescribed. A notice to annul an incumbrance is not bad, though it does not specify the particulars of the land held by the tenant or the rent payable by him and though it is addressed to several tenants jointly (*Jagabandhu Mazumdar v. Rashi Manjan Dasya*, 5 C. W. N., 272).

Assessment of mesne profits.—Where the position of the plaintiff is that of landlord and tenant combined, and the defendant, a sub-tenant, notwithstanding a notice served upon him under sec. 167 withheld

possession from the plaintiff, the mesne profits must be assessed on the value of the crops raised by the defendant, and not upon the basis of the rent which the rightful owner had been realising from the tenants, before dispossession (*Gopal Chandra Mandal v. Bhuban Mohan Chaturji*, 30 Calc., 536).

Limitation.—An application to avoid an incumbrance under sec. 167 was made by an auction-purchaser within one year from the date on which he had notice of the incumbrance, mentioning therein a wrong person as the incumbrancer. After the period of limitation another application was made by him to amend the previous application by substituting the name of the real incumbrancer, which was allowed by the Collector. It was held, however, that the Collector's functions in the matter were merely ministerial, that he had no power to make any such amendment and that the application for service of the notice on the real incumbrancer was barred by limitation (*Nitya Gopal Hazra v. Ghulam Rasul*, 28 Calc., 180). When limitation is governed by the provisions of this section, a minor is not entitled to a fresh period of limitation (*Akhai Kumar Sur v. Bijai Chand*, 29 Calc., 813).

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of [a decree for an arrear of rent] due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this Chapter, be treated in all respects as if they were tenures.

The words in brackets in this section were substituted by s. 52, Act I, B. C., of 1907, and Act I, E. B. C., of 1908, for the words "decrees of rent,"

Power to direct that occupancy holdings be dealt with under foregoing sections as tenures.

as a consequential alteration necessary in consequence of the addition of clause (c) to section 161.

Object of this section.—The object of this section is explained in the Statement of Objects and Reasons for the Bill, in which it was said that it was thought that the provisions of this Chapter were as a general rule unsuited to occupancy holdings, “inasmuch as an ordinary occupancy holding is not likely to be saddled with incumbrances which should be respected at a sale. It appears, however, that there are in some parts of the country occupancy-holdings of large extent, the land of which is sub-let on such terms that the interest of the lessee is of considerable value. Under these circumstances, the proper course appears to be that occupancy-holdings should as a rule be sold at once with power to annul all incumbrances (sec. 166) ; but that the Local Government should have power to direct that the occupancy holdings in any local area should be in the first instance put up subject to incumbrances as if they were tenures.” (Selections from papers relating to the Bengal Tenancy Act, 1885, p. 206). The Local Government has not as yet found it necessary to take action under this section.

169. (1) In disposing of the proceeds of a sale under this Chapter, the following rules, instead of those prescribed by section 295 (sec. 73) of the Code of Civil Procedure, shall be observed, that is to say :—

Rules for disposal of the sale-proceeds.
XIV of 1882.
V of 1908.

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale ;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of [the confirmation of] the sale ;

- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

[Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit framed under sub-section 148A or sub-section (1) of section 158B,—

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b), be made to the decree-holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and,
- (ii) if there remains a balance, payment of any rent which may have fallen due in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and the other co-sharer landlords in proportion to their respective shares in the tenure or holding.]

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

The words within brackets have been inserted in, and the proviso has been added to, clause (c) by s. 53, Act I, B. C., of 1907, and Act I, E. B. C., of 1908.

Clause (c).—In the case of a rent sale with express power to the purchaser to annul all encumbrances, so long as such power remains in the purchaser, the heir of a mortgagee is in jeopardy, and he may abandon his lien and ask to have it transferred to the surplus sale proceeds (*Nim Chand v. Ashutosh Datta*, 9 C. W. N., 117). Under sec. 316 of the Code of Civil Procedure (Act XIV of 1882) a sale takes effect from the date of its confirmation; so the decree-holder would seem to be entitled to be paid out of the balance of the sale proceeds any rent due to him up to the date of the confirmation of the sale. But he is apparently not entitled to be paid any interest due on this rent, for the definition of “rent” does not include interest (sec. 3 (5), p. 33). His right to interest will survive, but he apparently cannot get it under this clause. There is no provision in the law which enables a court acting under section 169 to allow interest: the term rent in that section does not include interest (*Monindra Chandra Nandy v. Asar Mahmud Mandal*, 12 C. W. N., cxliv). But according to Ghosh, J., in *Bijai Chand v. S. C. Mukherji*, (5 C. L. J., 27n : 11 C. W. N., 1106) the word “rent” in this clause cannot have been intended to exclude interest accruing thereupon, so as to compel the decree-holder to bring a fresh suit for the interest only. As to the liability of the tenure or holding for rent accrued due prior to the date of sale, see note to sec. 159. The words “date of sale” in this clause mean date of confirmation of the sale (*Matangini Chaudhurani v. Srinath Dass*, 7 C. W. N., 552. See also *Lakhi Narain v. Narendra Lal*, 11 C. W. N., ccxxxix.) This ruling has now been given effect to by the words inserted by s. 53, Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

In the Notes on Clauses to the Bill it is said :—

“As the law now stands, the decree-holder is, under section 169 of the Bengal Tenancy Act, entitled to the rent up to the date of the sale, while the purchaser under section 316 of the Civil Procedure Code, does not become entitled to the rent until the date of the confirmation of the sale. The proposed amendment will bring the sections into conformity.”

The landlord has a claim to the surplus sale proceeds preferential to that of the mortgagee of the holding, who stands in the shoes of the judgment-debtor (*Prabal Charan Mukherji v. Jadupati Chakravartti*, 6 C. L. J., 26 : 34 Cal., 724).

Proviso.—The proviso added by Act I, B. C., of 1907 and Act I, E. B. C., of 1908, has been rendered necessary by the additions to the Act made in sections 148A, and 158 B. Now, under these sections a

tenure or holding will pass in execution of a decree for rent obtained by a co-sharer landlord, if obtained in a suit framed under sec. 148A. Before execution of such a decree can be taken out, notice of the application for execution must under sect. 158 B (2), be given to the other co-sharers. The present proviso safe-guards their interests as regards their rights to participate in the distribution of the surplus sale proceeds.

Clause (d).—When in execution of a decree for arrears of rent the tenure was sold, and an unregistered tenant who was a purchaser of a share of the tenure after the date of decree brought a suit for recovery of his share of the surplus sale proceeds ; *held*, that the suit was maintainable (*Matangini Chaudhurani v. Srinath Das*, 7 C. W. N., 552). See also *Ambika Nath Acharjee v. Aditya Nath Maitra*, (6 C. W. N., 624).

Jurisdiction of the Small Cause Court.—A suit for a share of the sale proceeds of a tenure sold in execution of a decree for arrears of rent is not cognizable by a Small Cause Court (*Ram Kumar Sen v. Ram Kamal Sen*, 10 Calc., 388).

EASTERN BENGAL & ASSAM.

170. (1) Sections 278-283

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder. (O. XXI, rr. 58-63) (both inclusive) [and 310A] (O. XXI, r. 89) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

XIV of 1882,
V of 1908.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless,

170. (1) Sections 278 to

283 (O. XXI, rr. 58-63) (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

XIV of 1882,
V of 1908.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless,

before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

The words "and 310A" within brackets have been inserted in this section by s 54, Act I, B. C., 1907. But not so in the new province.

before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

(4) The withdrawal of the amount deposited under sec. 310A (O. XXI, r. 89) of the Code of Civil Procedure by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

Section 170 as amended in Bengal excludes the application of sec. 310A (O. XXI, r. 89) C. P. C., to

rent sales. The Legislature of the new Province did not think it proper to do away with that safeguard of the rights of unrecorded tenants, and other persons affected by the sale. Section 310A (O. XXI, r. 89) C P. C., is therefore still applicable to rent-sales in East Bengal. The Select Committee say :—

“It has been pointed out that in the case of transferable tenures or holdings, the former tenant and the landlord may collude with the result that an unregistered transferee may be defrauded and that in other cases also fraud may be practised upon unregistered tenants. If the right to deposit the decretal amount and have the sale set aside be taken away from such persons grave hardship and injustice may be caused. We are therefore of opinion that though by reason of sec. 310A proceedings in execution of rent decrees may in certain cases be protracted, yet the rights now possessed by many unrecorded tenants should not be taken away.”

Sub-section (1).—Claims to attached tenures or holdings.—

Sections 278 to 283 (O. XXI, rr. 58-63) of the Civil Procedure Code relate to claims to attached property and objections to the attachment thereof and their disposal. From the provisions of this sub-section it follows that no claims to tenures or holdings attached in execution of decrees under the Bengal Tenancy Act can now be enquired into. When in execution of a decree for arrears of rent, the defaulting tenure is attached, no claim under sec. 278, Civ. Pro. Code, is maintainable, whether the claim is to the tenure or adverse to the tenure (*Makbul Ahmad v. Rakhal Das Hasra*, 4 C. W. N., 732).^{*} The decision in this case being in conflict with that in *Jagabandhu Chattopadhyaya v. Dinu Pal*, (4 C. W. N., 734) the question was referred to a Full Bench, by which it was held that sec. 170 bars a claim under sec. 278, C. P. C., in all cases *i. e.* whether the claim to the tenure or holding attached be a claim to the tenure or holding, or be based on the ground that the property claimed is not part of the tenure or

holding attached (*Amrita Lall Bose v. Nemai Chand Mukhopadhyaya* 28 Calc., 382 : 5 C. W. N., 474). See also *Khetra Pal Singh v. Kritarthamayi Dasi*, (33 Calc., 566 : 10 C. W. N., 547 : 3 C. L. J., 470). If one decree is passed for arrears of two holdings this section has no application (*Bipra Das Dey v. Raja Ram Bandopadhyaya*, 13 C. W. N., 650). This sub-section applies to tenures or holdings attached after the Tenancy Act came into operation in execution of decrees obtained before that date (*Deb Narain Datta v. Narendra Krishna*, 16 Calc., 267). See note to sec. 2 (4), pp. 11-15.

Exclusion of operation of section 310A.—In the Notes on Clauses to the Bill of 1906 it was said with reference to this question :

"It has been held by the High Court that the provisions of section 310A of the Code of Civil Procedure apply to sales in execution of rent decrees. This enables persons other than the judgment-debtor to apply to have such sales set aside. It is undesirable that proceedings between landlord and tenant, relating to the recovery of rent, should be protracted by the intervention of third parties, and it is accordingly proposed that section 310A of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears of rent."

Some discussion took place in Council on the subject of this provision and its object was more fully explained as follows :

"The intention of the farmers of the Bengal Tenancy Act, 1885, with regard to sales of tenures or holdings for arrears of rent was that any one having in the tenure or holding an interest voidable on the sale (*e. g.*, a mortgagee or an unrecognised transferee) might pay in the decretal amount with costs *before*, and so stop, the sale. This is provided for in section 170, sub-section (3). But it was intended that, *after* the sale, only the judgment-debtor should have the privilege of having the sale set aside by paying up the decretal amount and costs with compensation to the auction-purchaser of 5 per cent. of his purchase money. The object of these provisions was to induce persons having an interest in the property to be sold to pay in the amount of the landlord's debt *before* the sale, so that the landlord (decree-holder) might get the money due to him quickly, and the matter might be settled and set at rest once for all. This was no hardship to the landlord, because (1) he got his money quickly, (2) his old tenant still remained his tenant, and (3) all risk of future complications and expense was obviated.

The provision that after the sale only the judgment-debtor should be allowed to pay up the decretal amount presented no practical* obstacle to the setting aside of the sale, and was no hardship to any one, because the decree-holder could always be compelled to take the money, whoever paid it, by the simple device of paying in the amount in the name of the judgment-debtor.

The provisions of section 310A have, however, by the rulings of the High Court, been extended to sales in execution of rent decrees, and the result of this has been (1) to take away from the mortgagee or unrecognised transferee

all inducement to pay in the decretal amount before sale, (2) to force the landlord (decree-holder) to take the money from a person whom he may not recognise, or wish to recognise, as his tenant, and (3) to give rise to the probability of protracted proceedings and long and expensive litigation. For, in the first place, the decretal amount is often paid in with a request that it may not be paid out to the landlord (decree-holder) till applications by the judgment-debtors for setting aside the sale on the ground of irregularities or fraud in the sale proceedings have been disposed of. Simultaneous applications under section 174 and to set aside the sale on the first of these grounds have now been provided against by clause 37 of the Bill. But there is no remedy for a simultaneous application under section 174 and one to set aside the sale on the ground of fraud. These applications to set aside the sale may be opposed both by the decree-holder and the auction-purchaser, for the latter may not wish to part with the tenure or holding purchased by him and to whom the statutory allowance of 5 per cent. on the purchase money may not be a sufficient compensation for the loss of his bargain. The decree-holder may also oppose the application to set aside the sale, not only on the ground that there was no fraud, but because the amount paid in was insufficient or was not paid in due time. These proceedings, with the inevitable appeal and second appeal or application for revision, to the High Court, may last for years. All this time the landlord does not know who his tenant is—whether he is the old tenant (*i. e.*, the judgment-debtor) or the auction-purchaser. He cannot be certain, then, whom he should sue for rent. He may sue the wrong person, and some of his lawful demands for rent may consequently become barred by limitation."

Sec. 310A. (O. XXI, r. 89) C. P. Code has been expressly excluded from application to rent-sales in Bengal from the 22nd May 1907 by Act I of 1907 B. C. An application presented on the 23rd May 1907 is incompetent (*Asiruddi Mandal v. Mokhadamoyi Dasi*, 35 Calc., 543 : 12 C. W. N., 434). The Court held in this case that even before the passing of the amending Act of 1907, Sec. 310A (O. XXI, r. 89) of the C. P. Code did not apply to a tenure or holding attached in execution of a decree for arrears of rent. Whatever may have been the correct view of the law before the amendment, it is now expressly excluded from Bengal proper and by necessary implication included in the law for Eastern Bengal and Assam. See *Ali Miah v. Ramjan Khan* (13 C. W. N., 224).

Sub-section 3.—Where a decree made in a suit for rent was in the main one for rent, although it included other sums which were not strictly rent within the meaning of the Bengal Tenancy Act, and in execution thereof the tenure in arrear was ordered to be sold under Chapter XIV of the Act and advertised: *Held*, that the holder of an under-tenure liable to be avoided would be justified in making a payment to prevent the sale of the superior tenure, and having made the payment, would be entitled to the rights, which are given to a person

who makes a payment under section 170 of the Bengal Tenancy Act (*Jnanada Sundari Chaudhurani v. Atul Chandra Chakravartti*, 32 Calc., 972). But the purchaser of a tenure from a tenant against whom the decree for rent was obtained in execution of which the tenure is advertised for sale has no right to make a deposit under this sub-section, as he has not an interest in the tenure voidable by the sale. But in a case of this nature, the High Court in revision did not set aside the order allowing such a purchaser to make the deposit on the ground that on a former occasion in similar circumstances the purchaser had made a similar deposit and the decree-holder had withdrawn it (*Jotindra Mohan Tagore v. Durga Debi*, 10 C. W. N., 438). A mortgagee making payments to save the mortgaged property from being sold in execution of a rent decree has an additional lien on the property for the sums so paid by him (*Rakhohari Chatteraj v. Bipro Das De*, 31 Calc., 975).

Co-sharer landlords cannot attach tenures or holdings in execution of decrees for their shares of rent.—An attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of rent of his separate share is not such an attachment as is contemplated by section 170 of the Tenancy Act. When landlords are seeking to take the benefit of this Act, they must under the provisions of sec. 188 act in concert; and when one of several co-sharers in a *zamindari* thinks fit to pursue his remedies to recover his share of the rent, he must pursue them under the ordinary law of the country, and independently of the Tenancy Act (*Beni Madhab Rai v. Juod Ali Sarkar*, 17 Calc., 390). But when a decree for the entire rent has been obtained by one of several co-sharers by making the others parties defendant and is executed by him alone and the defaulting tenure is attached, no claim by a third person under sec. 278, C. P. C., is maintainable. The decree has in this case the same effect as if it had been obtained by all the co-sharers and sec. 188 has no application (*Chandra Sikhar Patra v. Rani Manjhi*, 3 C. W. N., 386).

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this Chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per

centum per annum and secured by a mortgage of the tenure or holding to him ;

- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent ; and
- (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant; and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

This section is founded on the provisions of sec. 13, Reg. VIII of 1819, which under sec. 6 Act VIII, B. C., of 1865 and sec. 62, Act VIII, B. C., of 1869 were applicable to similar payments.

Clause (a).—A mortgage created by the operation of this section is not an incumbrance under sec. 161 and cannot be annulled by a purchaser at a sale held under the provisions of this Chapter (*Pasupati Mahapatro v. Narayani Dasi*, 24 Calc., 537 : 1 C. W. N., 519). It is a mortgage on the entire tenure ; so when a *sepatnidar* pays the amount due from the *darpatnidars*, he has a mortgage over the whole tenure, which cannot be divided in proportion to the interests of the *darpatnidars* (unreported case, S. A., No. 47 of 1889, decided by Petheram, C. J., and Banerjee, J., May 1st, 1890). This section does not apply to a person who has a sale set aside by paying the decretal amount and the auction-purchaser's commission under sec. 174. Such a person accordingly acquires no mortgage under this section over the shares of his defaulting co-tenants (*Gopi Nath Bagdi v. Ishar Chandra Bagdi*, 22 Calc., 800).

Clause (c).—Under cl. 4, sec. 13 of Reg. VIII of 1819 a person making a deposit to stay the sale of a superior tenure was entitled to be put in possession of the tenure of the defaulter "on applying for the same." These words do not occur in this section. A person who has made a payment under section 171 is entitled to be placed in possession in execution of decree and is not bound to bring a regular suit for the same (*Umatul Fatim v. Nimai Charan Banerji*, 6 C. L. J., 592). If the person in possession is a third party, the encumbrancer must bring a regular suit (*Ram Narain Routh v. Lal Das*, 6 C. L. J., 595 : 12 C. W. N., 55). A person who enters into possession of a tenure as mortgagee

under the provisions of cl. 40, sec. 13 of Reg. VIII of 1819 is bound in the first place to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt, and the defaulter is not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee (*Bhairab Chandra Kapur v. Lalit Mohan Singh*, 12 Calc., 185. See also *Kanai Lal Set v. Nistarini Dasi*, 10 Calc., 443). An underlessee in possession under section 171 cannot be evicted by the landlord, when the lessee has surrendered during such possession without the payment of the amount due by virtue of the statutory lien (*Nabadip Chandra Pal v. Bhairab Chandra Dhar*, 13 C. W. N., 97).

Sub-section (2).—Who may pay money into Court.—Under Act VIII, B. C., of 1865, it has been held that when an under-tenure has been transferred, but the transfer is not registered in the *serishtah* of the *samindar* or superior tenant, the transferee is, nevertheless, entitled as a person interested in the protection of the tenure to stop its sale in execution of the decree by paying into Court the amount of the decree (*Anand Lal Mukhurji v. Kulika Prasad Misra*, 20 W. R., 59, see also *Rajendro Narain Rai v. Phudi Mandal*, 15 Calc., 482). When the sale is at the instance of a co-sharer landlord whose decree operates as a money decree the encumbrancer is not entitled to make a deposit under Section 171 (*Umatul Fatima v. Nimai Charan*, 6 C. L. J., 592).

Effect of withdrawal.—It was held in the case of *Thomas Barclay v. Syed Hossein Ali Khan* (6 C. L. J., 601) that a landlord withdrawing money deposited by a transferee of his tenant may be, and in this case, was held estopped from denying the title by transfer. But this is no longer the law as the amended section 170 makes an express provision to the contrary.

Other remedies of persons whose interests are affected by sale.—These appear to be of a three-fold nature : (1) a regular suit for the recovery of the money deposited. See *Ambika Debi v. Pranhari Das*, (4 B. L. R., F. B. 77 : 13 W. R., F. B., 1), in which the person who made the deposit was an under-tenant, and *Lakhi Narain Mitra v. Khetto Pal Singh*, (13 B. L. R., 146), in which the depositor was an unregistered assignee of a *darpatni taluk*. But see also *Maharani Dasya v. Harendro Lal Rai*, (1 C. W. N., 458), in which a mortgagee who had purchased the mortgaged property in execution of his own decree on the property being again put up to sale in execution of a decree for arrears of the rent due prior to the date of his purchase, paid the amount and stayed the sale and then brought a suit to recover the amount of his payment. It was held that he could not recover, for there was no privity between him and the judgment-debtors under the decree for arrears of rent ; (2) deduction of the amount deposited from any amount due by him to the judgment-

debtor as his superior landlord. This is expressly provided in the section next following (sec. 172). See *Nobo Gopal Sarkar v. Srinath Bandopadhyaya*, (8 Calc., 877 : 11 C. L. R., 37) ; *Lalit Mohan Saha v. Srinibas Sen*, (13 Calc., 331). A tenant may similarly deduct from the rent any sum which he may have paid, not into Court, but direct to the *zamindar*, in order to stay the sale of the *patni* (*Tarini Debi v. Shama Charan Mitra*, 8 Calc., 954 ; but see *contra*, *Mahomed Hossain Ali v. Bakuulla*, 6 W. R., 84) ; (3) if, notwithstanding the deposit, the sale takes place, a suit will lie to have the sale set aside (*Afzal Ali v. Gurnarain*, 6 W. R., Act X, 59 ; B. L. R., F. B., 519. But see *contra*, *Mritanjai Sarkar v. Gopal Chandra Sarkar*, 10 W. R. 466 : 2 B. L. R., A. C., 131).

A private purchaser of a tenure, who has not registered his name in the landlord's *serishtu* and has not been recognized by him, cannot maintain a suit to set aside a sale held in execution of a rent decree obtained under Act X of 1859 against a registered tenant (*Patil Sahu v. Hari Mahanti*, 5 C. W. N., 126).

172. When a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord ; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

See note to preceding section.

173. (1) Notwithstanding anything contained in section 294 (O. XXI, r. 72) of the Code of Civil Procedure, the holder of a decree in execution of which a tenure or holding is sold under this Chapter may,

Decree-holder may bid at sale ; judgment-debtor may not.

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V of 1908.

without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

Sub-section (1).—Section 294 (O. XXI, r. 72) of the Civil Procedure Code prohibits a decree-holder bidding for or purchasing property put up to sale in execution of his decree without the express permission of the Court. This sub-section removes this restriction so far as sales held in execution of rent decrees are concerned.

Sub-section (2).—A judgment-debtor bidding for or purchasing property in contravention of this sub-section renders himself liable to the penalty provided in sec. 185, Indian Penal Code.

Sub-section (3).—When the purchaser is found to be a mere *benamidar* for the judgment-debtor, the sale is only voidable and not absolutely void. The proper Court to determine whether the sale should stand or fall, is the Court that held the sale (*Gopal Chandra Mitra v. Ram Lal Gosain*, 21 Calc., 554). The decree-holder and all the judgment-debtors are necessary parties to proceedings under section 173, Bengal Tenancy Act (*Mohima Chandra Neogi v. Jogendra Kumar Ghosh*, 3 C. W. N., xiv). An attachment creditor has *locus standi* to apply to set aside a sale under sec. 173, cl. 3, as he is interested in the sale (*Eastern Mortgage & Agency Co., v. Gobind Chandra Chaturji*, 3 C. W. N., xiv).

Limitation.—An application to set aside a sale under sec. 173 is governed by art. 178, Sched. II of the Limitation Act and should be made within three years from the date when the right to apply accrues (*Chand Mani Dasi v. Santo Mani Dasi*, 24 Calc., 707 : 1 C. W. N., 534).

Appeal.—No appeal lies from an order setting aside a sale under sec. 173 of the Bengal Tenancy Act (*Raghu Singh v. Misri Singh*, 21 Calc., 825). When an order has been made for setting aside a sale

under section 173, Bengal Tenancy Act, no appeal can be preferred from such an order by the auction-purchaser, although an appeal might lie on behalf of the decree-holder or a co-judgment debtor, and there is no real conflict between the cases of *Raghu Singh v. Misri Singh*, (21 Calc., 825) and *Chand Mani v. Santo Mani*, (24 Calc., 707 : 1 C. W. N., 534), *Mohima Chandra Neogi v. Jogendra Kumar Ghosh*, (3 C. W. N., xiv). See also *Harabandhu Adhikari v. Harish Chandra De*, (3 C. W. N., 184.) An appeal will lie on behalf of the judgment-debtor, and when the appellant's case is that the purchase was made not by a third party but by some of the judgment-debtors *benami* in the name of the auction-purchaser, if that be proved, the case will come under sec. 244, C. P. C., and an appeal will lie (*Sriram Chandra Singh v. Guru Das Kundu*, 3 C. W. N., civ). Where the auction-purchaser is a third person and not the decree-holder and where upon an application being made by the judgment-debtor under sec. 310A, C. P. C., to set aside the sale, it is not contested by the decree-holder, so that no question arises between the decree-holder and the judgment-debtor, the order of the Court does not fall under s. 244, C. P. C., and is consequently not appealable (*Amir Rai v. Basdeo Singh*, 5 C. L. J., 204).

Second Appeal.—Where the auction-purchaser is a *benamidar* for the judgment-debtor, in an application to set aside a sale under sec. 173 of the Tenancy Act and sec. 311, C. P. C., a second appeal lies to the High Court from the order made on the application, as the application is one under sec. 244 of the C. P. Code (*Chand Mani Dasi v. Santo Mani Dasi*, 24 Calc., 707 : 1 C. W. N., 534). But the auction-purchaser has no right of appeal against an order under this section (*Durlav Pradhana v. Mahomed Mainaddi*, 13 C. W. N., c.) The purchaser of the interests of a judgment-debtor is his representative for the purpose of execution proceedings (*Akshai Kumar Sur v. Bijai Chand*, 29 Calc., 813).

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five *per centum* of the purchase-money.

Application
by judgment-
debtor to set
aside sale.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 (O. XXI, r. 93) of the Code of Civil Procedure shall apply in the case of a sale so set aside :

Provided that, if a judgment-debtor applies under section 311 (O. XXI, r. 90) of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section, [and if he applies under this section, he shall not be entitled to make an application under section 311 (O. XXI, r. 90) of the Code of Civil Procedure.]

(3) Section 313 (O. XXI, r. 91) of the Code of Civil Procedure shall not apply to any sale under this Chapter.

The words in brackets were added to the proviso to sub-section 2 by s. 55, Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

This section does not confer a new right.—In *Jagadanand Singh v. Amrita Lal Sarkar* (22 Calc., 767), it was held by a Full Court that this section did not create a new right in a judgment-debtor, and is therefore applicable to proceedings in execution of a decree which had been passed before the Tenancy Act became law and that the provisions of sec. 310A (O. XXI, r. 89) C. P. C., are also applicable to such proceedings. See note to sec. 2 (4), pp. 11-15.

Meaning of "decree" in this section.—The word "decree" in this section primarily refers to the decree of which execution is sought. But if in the meantime, that is, before the sale is actually held, the decree of the Court of first instance is modified in appeal in favour of the judgment-debtor, then, necessarily the "decree" must be the decree of the appellate Court (*Bhikki Singh v. Bhunu Mahtan*, 3 C. W. N., 231).

Sale in execution of decree for road-cess.—The provisions of sec. 174 are applicable to a sale held in execution of a decree for road-cess (*Kishori Mohan Rai v. Sarodamoni Dasi*, 1 C. W. N., 30).

Sub-section (1).—Who may deposit decretal amount and apply to have the sale set aside.—The term "judgment-debtor" used in this sub-section has been interpreted strictly as referring to the

judgment-debtor alone and as not including a transferee or assignee from a judgment-debtor (*Rajendra Narain Rai v. Phudi Mandal*, 15 Calc., 482). But this decision is now of little practical importance, as it has been held in *Janardan Ganguli v. Kali Krishna Thakur*, (23 Calc., 393) that the provisions of sec. 310A (O. XXI, r. 89) of the Code of Civil Procedure are applicable to sales held in execution of rent decrees. The provisions of section 310A are new and were added to the Code of Civil Procedure by Act V of 1894. They allow "any person whose immoveable property has been sold in execution of a decree to apply to have the sale set aside on his depositing within 30 days of the sale the decretal amount and 5 p. c. of the purchase money." The terms of sec. 310A are, therefore, much wider than those of sec. 174, and consequently practically supersede them. The decision in *Janardan Ganguli v. Kali Krishna Thakur* was followed in *Banshidhar Haldar v. Kedar Nuth Mandal* (1 C. W. N., 114).

In an unreported case (Rule No. 269 of 1888, decided by Petheram, C. J., and Tottenham, J., on the 30th April, 1888), it was held that a judgment-debtor can apply under this section for the setting aside of a sale, even when the sale has taken place in execution of a decree for arrears of rent obtained against him by a co-sharer landlord, in which case under the old law only the rights and interests of the judgment-debtor were sold, and not the tenure or holding itself. But in a later case, also unreported, *Kailash Kamini Debi v. Umar Mandal* (S. A., No. 443 of 1892), it was decided, following the ruling in *Beni Madhub Rai v. Juod Ali Sarkar* (17 Calc., 390) to the effect that an attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of the rent of his separate share is not an attachment under sec. 170 of this Act, that, when a tenure is sold in execution of a decree obtained by one of several joint landlords for his share of the rent of the tenure, the tenant is not entitled to avail himself of the privilege conferred by this section and to ask that the sale may be set aside on his payment of the amount recoverable under the decree and cost and a sum equal to 5 p. c. upon the purchase-money. The question is, however, now of less importance than formerly, for it would seem that, if a tenant under such circumstances cannot apply under sec. 174 of this Act, he can always do so under sec. 310A of the Code of Civil Procedure and obtain the same relief as he would have obtained, if sec. 174 had been applicable. A *benamidar* of a person whose property has been sold has a right to apply to have the sale set aside under sec. 310A, C. P. C. (*Basi Poddar v. Ram Krishna Poddar*, 1 C. W. N., 135; *Paresk Nath Singh v. Nobo Gopal Chattopadhyaya*, 5 C. W. N., 821; 29 Calc., 1). A purchaser who claims to be a purchaser of a tenure prior to attachment from a judgment-debtor whose interest in the tenure has been sold in

execution of a decree for its own arrears of rent is entitled to apply under sec. 311 of the Code of Civil Procedure to set aside the sale (*Abhai Dasi v. Padmo Lochan Mandal* 22 Calc., 802). A person who acquired an interest in a property before the judgment-debtor became liable can apply under sec. 310A, C. P. C. (*Banshidhar Haldar v. Kedar Nath Mandal*, 1 C. W. N., 114), but not a purchaser at a private sale from the judgment-debtor after sale in execution (*Hazari Ram v. Badai Ram*, 1 C. W. N., 279). A mortgagee, whether by a simple mortgage or a mortgage by conditional sale of a tenure or holding sold in execution of arrears of rent due in respect of it, is a person "whose immoveable property has been sold" and can apply under sec. 310A. (*Paresh Nath Singh v. Nobo Gopal Chattopadhyay*, 5 C. W. N., 821 : 29 Calc., 1). So can an under-raiyat (*Chandra Kumar Nath v. Kamini Kumar Ghosh* 11 C. W. N., 742). The purchaser of a share of an occupancy holding transferable by custom can apply under sec. 310A, (*Binodini Dasi v. Piari Mohon Haldar*, 8 C. W. N., 55 ; *Kunjo Bihari Mandal v. Sambhu Chandra Rai*, 8 C. W. N., 232). When a *mokarari* tenure is sold in execution of a decree for arrears of rent, a *dar-mokararidar* has a right to come in and make a deposit under s. 310A, C. P. C., (*Narain Mandal v. Sourindra Mohun Tagore*, 32 Calc., 107). A person who holds a *howla* within an *osat taluk*, which has been sold free from incumbrances in execution of a decree for arrears has no right to apply under sec. 310A for setting aside the sale (*Administrator General of Bengal v. Mahomed Khalil*, 5 C. W. N., cxxxii). An under-raiyat cannot make a deposit and apply under sec. 310A, to have a sale of a holding set aside (*Abid Mollah v. Diljan Mollah*, 29 Calc., 459).

But by the addition now made to sec. 170 by s. 54, Act I, B. C., of 1907, which renders inapplicable the provisions of sec. 310A (O. XXI, r. 89) C. P. C., to sales in execution of rent decrees, most of these rulings are no longer of much use in Bengal proper : but they are living authorities for Eastern Bengal where Act I, E. B. C., of 1908 has not adopted this change.

Amount deposited cannot be rateably distributed.—Sec. 295, (Sec 73) C. P. C., which provides for the rateable distribution of assets realised by sale or otherwise does not apply to a deposit made by a judgment-debtor either under sec. 174 of the Tenancy Act or under sec. 310A, C. P. C., (*Bihari Lal Pal v. Gopal Lal Sil*, 1 C. W. N., 695). The words "payable to the decree-holder" mean that he is the person solely entitled to the money paid into Court (*Roshan Lal v. Ram Lal Mallik*, 30 Calc., 262 : 7 C. W. N., 341).

Sub-section (2).—How and when deposit may be made and its effect.—The deposit under sec. 174 of the Tenancy Act must

be of such a nature as to be at once payable to the parties, and a Court has no power under that section to set aside a sale unless the judgment-debtor has strictly complied with its provisions. A deposit made in the shape of Government promissory notes is not good. The deposit should be made in the currency of the country (*Rahim Baksh v. Nando Lal Gossami*, 14 Calc., 321). A deposit under sec. 174 must be such as the decree-holder may draw out at once. A deposit not made payable to the decree-holder until a certain event has happened is not a good deposit (*Shakoti v. Jotindro Mohan Tagore*, 1 C. W. N., 132). But in a subsequent case it was held that a deposit, with regard to which it was subsequently applied that it should be retained in Court pending the disposal of an application under sec. 108 (O. IX, r. 13) C. P. C., was a valid deposit (*Hanuman Singh v. Lachman Sahu*, 8 C. W. N., 355). The whole of the debt, the expenses, and the damages which the purchaser has sustained must be deposited in Court; so that the Court may know of its own knowledge that the provisions of the section have been complied with (*Kabilaso Kuar v. Raghu Nath Saran Singh*, 18 Calc., 481). If the Court be closed on or before the last day of the period limited, the judgment debtor may pay the amount into Court on the first day the Court re-opens, notwithstanding the absence of any express provision to this effect (*Sashi Bhushan Rudro v. Govind Chandra Rai*, 18 Calc., 231). See also sec. 10, Act X of 1897. The words "date of sale" in sec. 310A (O. XXI, r. 89) C. P. C. mean the actual date of sale (*Kesa Sahu Singh v. Giani Rai*, 6 C. W. N., 776). If the amount payable has been calculated and settled by an officer of the Court and that amount has been paid into Court, an order setting aside the sale must be made as a matter of right, even though the amount is short by a small sum (*Ugrah Lal v. Radha Prasad Singh*, 18 Calc., 255). This was followed in *Abdul Latif v. Judab Chandra Mitra* (25 Calc., 216) and *Fakir v. Biraj Mohini Dasi* (11 C. W. N., 116). The same rule applies to amounts deposited under the provisions of sec. 310A, C. P. C. (*Mukbul Ahmed v. Bazal Sobhan Chaudhri*, 25 Calc., 609). But in *Chandi Charan Mandal v. Banka Bihari Lal* (26 Calc., 449), it was ruled by a Full Bench that where the judgment-debtor has not within thirty days from the date of sale deposited in Court a sum equal to 5 p. c., of the purchase-money and the amount specified in the proclamation of sale, but has deposited in Court a sum calculated by some officer of the Court as the sum to be deposited in respect of such 5 p. c. and of the sum specified in such proclamation of sale, and there is nothing to show that there was any mistake of the Court by which the judgment-debtor was induced to deposit an insufficient amount, the sale ought not to be set aside. When a deposit has been duly made and an order setting aside the sale has

been passed, a further order under sec. 315 (O. XXI, r. 93) of the Code of Civil Procedure directing the return of the purchase-money to the purchaser should be given. This order under sec. 315 of the Civil Procedure Code may be enforced as a decree for money.

Notice to purchaser.—An auction-purchaser is entitled to a notice before an order under sec. 310A (O. XXI, r. 89) for setting aside a sale, is made (*Janardan Ganguli v. Kali Krishna Thakur*, 23 Calc. 396; *Banshidhar Haldar v. Kedar Nath Mandal*, 1 C. W. N., 114). But see *Bhairab Pal v. Prem Chand Ghosh*, (1 C. W. N., clxi)

Sub-section (2). Proviso.—Section 311 (O. XXI, r. 90) of the Code of Civil Procedure allows an application to be made for the setting aside of a sale on the ground of material irregularity in publishing and conducting it by the decree-holder or any person whose immoveable property has been sold, provided the applicant proves that he has sustained substantial injury by reason of the irregularity, and this has been held to apply also to sales taking place in execution of rent decrees (*Azizunnissa Khatun v. Gora Chand Das*, 7 Calc. 163.) In *Rajendra Nath Haldar v. Nil Ratan Mitra*, 23 Calc., 958, it was ruled that when an applicant had made an application under sec. 310A, Act XIV of 1882, he could not immediately afterwards make an application under sec. 311 of the same Act, so as to carry on simultaneously applications under both sections. The provisions of sec. 310A are almost exactly the same as those of the proviso to sub-section (2): so this ruling would seem also to preclude applications under sec. 174 of this Act and sec. 311, C. P. C., being carried on simultaneously. (See *Sital Rai v. Nanda Lal*, 13 C. W. N., 591).

This has now been provided for by the addition to the proviso made by s. 55, Act I, B. C., of 1907, and Act I, E. B. C., of 1908, which meets the converse case to that already dealt with in the proviso.

The word "applies" in the proviso, means "applies and prosecutes" (*Sital Rai v. Nanda Lal*, 13 C. W. N., 591).

In the Notes on Clauses of the Bill of 1906, it was said:

"Under section 174, as at present framed, there is nothing to prevent a tenant from applying to have a sale set aside, by paying the decretal amount and subsequently claiming, under section 311 of the Code of Civil Procedure, that the sale was invalid. It is clearly inequitable that the tenant should be allowed to have recourse to a double procedure in applying to have a sale set aside, and the proposed addition to section 174 will prevent this."

Sub-section 3.—Section 313 allows of applications to set aside sales on the ground of the persons whose property has been sold having no saleable interest therein. Sales of tenures or holdings cannot be set aside on this ground, as "the rent is a first charge" upon them (sec. 65),

and they are liable to be sold for arrears of rent due in respect of them, no matter in whose hands they may be at the time of their sale. The persons in possession of the property, or whose property has been sold, have their remedy in sec. 335 of the Code, or by means of a regular suit.

No appeal lies.—An order under sec. 174 is not appealable, as it is not one under sec. 244, (Sec. 47) C. P. C. (*Kishori Mohan Rai v. Saroda Mani Das*, 1 C. W. N., 30), and not being a proceeding for the execution of a decree (*Subh Narain Lal v. Gorak Prasad*, 3 C. W. N., 344). Neither is an order under sec. 310A appealable when it only decides a question between the auction-purchaser and judgment-debtor (*Bansidhar Haldar v. Kedar Nath Mandal*, 1 C. W. N., 114).

An appeal lies.—It is appealable when it decides a question between decree-holder and judgment-debtor (*Kripa Nath Pal v. Ram Lakshmi Dasya*, 1 C. W. N., 703; *Phul Chand Rai v. Narsingh Misra*, 28 Calc., 73). See also *Sital Rai v. Nanda Lal* (13 C. W. N., 591).

When the auction-purchaser is a stranger, sec. 622 C. P. C. applies (*Kedar Nath Sen v. Uma Charan*, 6 C. W. N., 57).

The purchaser of the interest of a judgment-debtor is his representative for the purpose of execution proceedings (*Akhai Kumar Sur v. Bijai Chand*, 29 Calc., 813).

No charge on property for amount paid to set aside sale.—Where the plaintiffs and defendants were co-tenants of two *jotes*, which were sold in execution of a decree for rent, and the plaintiffs paid the decretal amount and auction-purchaser's fees, and had the sale set aside, it was held that the plaintiffs had not, besides their right to contribution personally, a right to a charge on the property so far as the share of their co-tenants was concerned for the amount paid by them (*Gopi Nath Bagdi v. Ishar Chandra Bagdi*, 22 Calc., 800). A mortgagee making a payment under sec. 310A to save a mortgaged property from being sold in execution of a rent decree has an additional lien on the property for the sum so paid by him (*Rakhohari Chattoraj v. Bipra Das De*, 31 Calc., 975).

How an order under this section can be set aside.—No suit is maintainable to set aside a sale under the provisions of this section (*Kabilaşo Koer v. Raghu Nath Saran Singh*, 18 Calc., 481). The propriety of an order refusing to set aside a sale can be called in question by an application under sec. 622 of the Civil Procedure Code (unreported case, Rule No. 269 of 1888, decided by Petheram, C. J., and Tottenham, J., on the 30th April, 1888; *Rahim Baksh v. Nando Lal Gossami*, 14 Calc., 321; and *Jaggabandhu Patak v. Jadu Ghosh Alkushi*, 15 Calc., 47). See also *Debo Das v. Ram Charan Das*, 2 C. W. N., 477).

175. Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877 (Act XVI of 1908) an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Registration of certain instruments creating incumbrances.

III of 1877.
XVI of 1908.

Part IV of the Registration Act deals with "the time of presentation." The date of the commencement of this Act is the 1st November 1885. See note to sec. 1 (2), p. 2.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Notification of incumbrances to landlord.

Rules 11, 12 and 13 of the rules framed by the Registration Department under this Act prescribe how applications under this section are to be dealt with. The process fees payable for notifying the incumbrance to the landlord are those fixed by rules 101 to 104 of Chap. VII of the Government rules under this Act, and the copy of the incumbrance should be served on the landlord in the manner prescribed by rule 3, Chap. I of the same rules.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on
exclusion of Act
by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them. *

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land ;
- (b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23 ;

- (c) take away the right of a raiyat to surrender his holding in accordance with section 86 ;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage ;
- (e) take away the right of an occupancy-raiyat to, sub-let subject to, and in accordance with, the provisions of this Act ;
- (f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52 ;
- (g) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40 ; or
- (h) affect the provisions of section 67 relating to interest payable on arrears of rent :

Provided as follows :—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right ;
- (ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a

raiyyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyyat ;

- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of [horticultural or] orchard land with agricultural crops.

[*Explanation.*—The expression “horticultural land” as used in proviso (iii) means garden land in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.]

The words in brackets in proviso (iii) and the explanation have been inserted and added by s. 56, Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

Sub section (1). Clause (a)—Section 7 of Act X of 1859 and of Act VIII, B. C., of 1869 provides that nothing in sec. 6 of these Acts, (the section prescribing that raiyyats cultivating or holding land for twelve years shall have a right of occupancy in such land), shall affect the terms of any written contract for the cultivation of land entered into between a land-holder and a raiyyat, when it contains any express stipulation contrary thereto. But these provisions have been wholly superseded by sec. 178 of this Act (*Bengal Indigo Co. v. Raghubar Das*, 24 Calc., 272 : L. R., 23 I. A., 158 : 1 C. W. N., 83). An agreement made before the passing of the Bengal Tenancy Act between a landlord and his tenant, which bars the acquisition of the right of occupancy during the lifetime of the tenant, does not come within the prohibitory terms of section 178 (3), clause (a) of the Act, nor does it come within the terms of section 178 (1) clause (a) of that Act. Where before the passing of the Bengal Tenancy Act a landlord entered into an agreement with his tenant and the defendant that the former would hold certain lands under him for her life and that after her death the landlord would take *khas* possession of them and that her heirs, that is, the defendant or her heirs, would never raise any objection or prefer any sort of claim to them : *Held*, that it was a valid contract under section 7, Act VIII of 1869 (B. C.), that

the tenant during her lifetime was not an occupancy raiyat and that the defendant, who claimed to be the heir of the tenant never having been recognized by the landlord as tenant, was a trespasser (*Baul Chandra Chakravartti v. Nistarini Debi*, 33 Calc., 136 : 10 C. W. N., 533).

Sub-section (1). Clause (b).—In a suit commenced before the passing of the Tenancy Act and brought to eject certain defendants in accordance with the terms of a *solehnamah*, or agreement, entered into between the plaintiff and the defendants, and in which the latter had agreed to hold a certain specified area for a term of five years, which term had expired, and in which the lower Courts found that as regards a certain portion of the land in question, the defendants had acquired occupancy rights before the alleged *solehnamah* was executed, it was held that the tenants could not get the benefit of sec. 178. The Court (Tottenham and Norris, JJ.) in this case said :—"We think that in this suit which commenced before the new Tenancy Act came into force, the tenant cannot get the benefit of sec. 178. We think that the point to be looked at was, what was the right of the tenant at the time the suit was brought. At the time the suit was brought there was nothing to prevent his contracting himself out of his right" (*Maheswar Prasad Narain Singh v. Sheobaran Mahto*, 14 Calc., 621). But this case was decided before the Full Bench case of *Deb Narain Datta v. Narendra Krishna*, 16 Calc., 267, and would seem not to be in accordance with the principles laid down in it ; for sub-section (1), clause (b), of sec. 178 does affect a substantive right, and from the words "any contract made between a landlord and a tenant *before* or after the passing of this Act," it would appear that it was expressly intended that this clause should have retrospective effect. See note to sec. 2, p. 12.

Sub-section (1). Clause (c).—This clause "makes it clear that under the present rent law in all cases to which it applies there can no longer be any eviction on the ground of forfeiture incurred by denying the title of the landlord" (*Debirudin v. Abdur Rahim*, 17 Calc., 196.) See note to sec. 89, pp. 287, 288. A stipulation in a lease to the effect that the lessee shall not purchase the *jote* rights of any tenant, and that, if he does so, the purchase shall be null and void, and that on expiry of the term of the lease, the lessor shall be entitled to *khas* possession is valid and in no way contrary to public policy (*Watson & Co. v. Ram Chandra Datta*, 1 C. W. N., 174). In a case in which it was sought to eject a tenant from certain homestead land held as part of a raiyati holding under a lease which contained a stipulation that the tenant would quit whenever the landlord called upon him to do so, it was ruled that sec. 44 cl. (c) only applies when the lease is granted for a fixed term, and that under sec. 178, subsection 1, cl. (c), the stipulation in the lease could not be enforced (*Nanda Kumar Guha v. Kali Kumudin Haaji*, 3 C. W. N., xlvii).

Sub-section (2).—The 15th July, 1880, mentioned in this sub-section, is the date of the publication by the Government of Bengal of the Rent Law Commissioner's Report and Draft Bill. The date of the passing of the Act is the 14th March, 1885.

Sub-section (3). Clause (a).—The mere fact that in the lease the land is described as *khuakust* land, would not be sufficient in itself to prevent the tenants from acquiring occupancy rights and would not shift the onus on the tenant (*Ajodhya Prosud Singh v. Ram Golam Singh*, 13 C. W. N., 661).

Sub-section (3). Clause (d).—A transfer of a tenure made in terms of the provisions of this Act is not binding on the landlord if there be a contract between the landlord and the tenant that the transfer shall not be valid and binding until security to the satisfaction of the landlord has been furnished by the transferee, and such security has not been furnished. Sec. 178 does not deal with this matter (*Dinabandhu Rai v. W. C. Bonerjee*, 19 Calc., 774).

Sub-section (3). Clause (h).—A tenant before the passing of the Tenancy Act executed a *kabulyat* agreeing to pay interest on arrears at a higher rate than 12 p. c., p. a. In execution of a decree for arrears, his holding was put up to sale and purchased by the defendant. The landlord then sued the purchaser for arrears and interest at the rate stipulated for in his predecessor's *kabulyat*. It was held that the plaintiff was not entitled to a higher rate of interest than that allowed by sec. 67 of the Act, as the stipulation to pay a higher rate, though it might have been binding on the former tenant so long as he held the land, was not an ordinary incident of the holding and did not attach to the land so as to bind the defendant who purchased the holding at the sale (*Alim v. Sotish Chandra Chaturdhuri*, 24 Calc., 37). This clause is applicable to contracts entered into after the passing of the Act, *viz.* 14th March 1885, and parties cannot contract themselves out of the provisions of s. 67 which limits interest to simple interest at 12 p. c., p. a. by the device of making the rent payable otherwise than quarterly. Such a contract is not enforceable in so far as it may provide for payment of interest at a rate higher than 12 p. c., (*Narendra Kumar Ghosh v. Gora Chand*, 33 Calc., 683). See note to sec. 67, p. 234.

Orissa.—In Orissa when the provisions of sec. 67 have been extended but not those of this section, a contract may be made at variance with the provisions of sec. 67 as to the payment of interest (*Gobinda Chandra Mahapatra v. Choudhury Ram Chandra Nisanka*, 13 C. W. N., 95).

Proviso (iii). Horticultural.—In the Notes on Clauses of the Bill of 1906 it was said :

"It seems reasonable that proviso (iii) to section 178 should be extended to horticultural land, temporarily let out for the cultivation of ordinary crops. If a tenant is given a temporary lease of such lands, he should not be allowed to retain them after the expiry of the lease, on the plea that occupancy rights have accrued."

This necessitated a definition of the meaning of "horticultural," which has been given in the "*Explanation*".

Contracts for payment of rent.—A contemporaneous oral agreement cannot be proved to shew that the rent is less than what is stated in the registered *kabulyat* (*Radha Raman Chaudhuri v. Bhawani Prasad Bhumik*, 6 C. W. N., 60). Where one of several joint tenants executed a *kabulyat* for the entire tenure and it was found that the other tenants did not acquiesce in, and were not bound by it, *held* that the tenant executing the *kabulyat* was not liable for the whole rent or for more than his share of it (*Ram Taran Chaturji v. Asmatullah*, 6 C. W. N., 111).

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarari lease on any terms agreed on between him and his tenant.

Proprietors have power by sec. 2, Reg. V of 1812 and sec. 2, Reg. XVIII of 1812 to grant leases for any period, even to perpetuity, and at any rent which they may deem most conducive to their interests. This power is now extended to permanent tenure-holders, but not to other classes of tenants.

This section controls sec. 67.—This section controls sec. 67; so that a lease of a *dar-patni taluk*, created on the 13th February, 1886, *i. e.*, after the Tenancy Act had come into operation, by the terms of which the defendant was bound to pay rent in monthly instalments and if not so paid, to pay interest at the rate of 1 p. c., *per mensem*, is not affected by the provisions of sec. 67 read with those of sec. 178 (3) (*h*), being a permanent lease granted by a permanent tenure-holder in a permanently settled area (*Atulya Charan Basu v. Tulsi Das Sarkar*, 2 C. W. N., 543). But the contrary was laid down in *Basanta Kumar Ray Chaudhuri v. Promotha Nath Bharitacharjee*, (26 Calc., 130: 3 C. W. N., 36), in which it was held "that a contract by a tenant holding under a permanent *mukarari* lease to pay interest on the arrears of rent at a higher rate than 12 per cent. per annum is not enforceable in

law." The conflict between these two rulings was referred to a Full Bench by which it was settled that sec. 179 does control sec. 67, and that the latter of the two cases referred to above was wrongly decided (*Matangini Debi v. Makrura Bibi* 5 C. W. N., 438 : 29 Calc., 674 ; *Alimunnissa Chaudhurani v. Shama Charan Rai*, 32 Calc., 749 : 9 C. W. N., 466 : 1 C. L. J. 176). An auction-purchaser of a *dar-patni* tenure is bound by a stipulation contained in the *dar-patni* lease as to the payment of interest on the arrears of rent, such a stipulation, where there is nothing unusual in it, being part of the ordinary incidents of a tenure (*Raj Narain Mitra v. Panna Chand Singh*, 30 Calc., 213). See note, p. 235.

Mukarari—A perpetual *mukarari* lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity (*Mohanand Sahai v. Musummat Syedunnissa Bibi* 12 C. W. N., 154). The word *mukarari* means "with fixed rent": when applied to a tenure it means a tenure held at a fixed and permanent rate of rent. A *Kaimi Mourasi Patta* held not to be a *mukarari* lease (*Gayartulla Sardar v. Girish Chandra Bhaumik* ; per Maclean C. J., 12 C. W. N. 175).

This section controls sec. 74.—In a suit for arrears of *chaukidari* tax payable by a *patnidar* under the *patni* settlement, the defence was that it was an *abwab* or illegal cess, and therefore, could not be recovered in consequence of the provisions of sec. 74 of the Act. It was held that it was not an *abwab*, and, therefore, that it was unnecessary to consider the effect of sec. 179 of this Act. It was, however, said that "there is no doubt of some repugnancy between this section and sec. 74 of the Act, but whether, following the principle enunciated by the Lord Justice James in *Ebbs v. Boulnois*, (10 Ch., App., 479 (484)), we regard the latter, which is a special provision, as a qualification of the former, which is a general one, or adopting the rules stated by Keating, J., in *Wood v. Riley* (L. R., 3 C. P., 26 (27)) that of two repugnant clauses in a statute the last must prevail, give effect to the latter, there seems to be good reason for thinking that sec. 179 is not controlled by sec. 74" (*Ahsanullah Khan v. Tirthabashini*, 22 Calc., 680). This was followed in *Krishna Chandra Sen v. Sushila Sundari* (26 Calc., 611 : 3 C. W. N., 608) in which it was decided that a stipulation for the payment of an *abwab* in a permanent *mukarari* lease is valid and sec. 74 does not control sec. 179. Where a permanent tenancy was created by a lease dated 1860, *i. e.*, before the passing of this Act, the provisions of s. 179 will not apply and the landlord cannot recover any *abwab* from the tenant (*Apurna Charan Ghosh v. Karam Ali*, 4 C. L. J., 527 : 10 C. W. N., 527). See note, p. 258.

Utbandi, chur
and diara lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

(a) who, in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or,

(b) who holds land of the kind known as chur or diara,

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of utbandi and for the time being held under that custom, or

in case (b), in the chur or diara land,

until he has held the land in question for twelve continuous years ; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or diara land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Utbandi tenancies.—An *utbandi* tenancy is a tenancy from year to year, sometimes from season to season, the rent being regulated, not as in the case of *halhasili* by a lump payment in money for the land cultivated, but by the appraisement of the crop on the ground, and according to its character. So far it resembles the tenancy by crop appraisement of the *bhuoli* system ; but there is between them this marked difference that, while in the latter the land does not change

hands from year to year, in the former it may. (See Selections from papers relating to the Bengal Tenancy Act, 1885, p. 371). The term *utbandi* is said to be due to the fact that under this system of tenancy the land at the end of the season or of the period of the lease may lie fallow on account of the exhaustion of its strength or because no one has come forward to take it. The system prevails in the districts of 24-Parganas, Nuddea, Jessore, Khulna, Murshidabad and also Pubna. (See letter from the Commissioner of the Presidency Division, 24 R. L., dated 17th Sept., 1884, printed at p. 183 of the Bengal Government's report on the Bengal Tenancy Bill, 1884, Vol. II). The cases in which this system of tenancy has been noticed are as follows. In *Kenny v. Ishar Chandra Poddar*, (W. R., Sp. No., 1864, Act X, 9), it is pointed out that the *utbandi* system prevails in the district of Nuddea and the *utbandi* raiyat is not a continuing tenant, but cultivates only a piece of land in one year, and another, the next. In *Mirzan Biswas v. Hills* (3 W. R., Act X, 159), it is said :—"There exists in the district of Kishnagar a custom, under which tenants can cultivate land, which is not directly let out to other tenants, but remains *khas khamar* on payment of certain high rates of rent. In the case of such tenants, there exists an implied agreement between the parties, that such rent shall be paid ; and the amount of land so cultivated and the rent to be paid for it are ascertained each year by actual measurement. The lands in question are called *utbandi* lands, and the rates are calculated at what are called *utbandi* rates." Again, in *Dwarkanath Misra v. Nabo Sardar* (14 W. R., 193), Jackson, J., observed—"Some little confusion appears to me to have been introduced into the case by the use of the term *utbandi*. So far as my experience and knowledge of the matter go, an *utbandi* tenure is one by which a raiyat holds a certain area of land (which I believe is usually defined), but for which he pays rent according to the quantity of that land which year by year he cultivates. The rent will, therefore, vary according to the actual cultivated area ; but I am not aware that there is any authority for saying that a landlord is at liberty to vary at his pleasure the rate at which a tenant holding an *utbandi* tenure pays for the land which he cultivates, due notice being served on him under sec. 13, Act X of 1859."

In the case of *Premanand Ghose v Surendra Nath Rai*, (20 W. R., 329) the *jote* in question was a *nuksan joke*, which was said to be very much the same as *utbandi* and it was ruled that occupancy rights could be acquired in such *jotes*, if held for twelve years, although the tenant under the custom of the locality only paid rent for the years when he could cultivate the land. But in *Beni Mudhab Chakravartti v. Bhuban Mohan Biswas*, (17 Calc., 393), it was decided that under sec. 180 of this Act a right of occupancy cannot be gained in a piece of land held

on the *utbandi* system, if the possession of the land has not been continuous, though it may have commenced more than twelve years previously. In this case it was remarked :—“Section 180 of the Bengal Tenancy Act prohibits the acquisition of an occupancy right in land ordinarily let under the custom of *utbandi* until that particular land has been held for twelve years continuously. In this respect *utbandi* land is dealt with in the Act differently from ordinary rayati land in which by sec. 21 a settled raiyat has a right of occupancy, no matter how short a time he has held it. Now, it is necessary to enquire what this *utbandi* system really is ; for there seems to have been some difference of opinion regarding it and perhaps in fact the incidents of that system do vary in different places. Several Judges who have sat in this Court have stated their own opinions on this subject, and their opinions have not been quite uniform. Perhaps our safest guide in the matter is what is to be found in special reports made by Revenue Officers, and in the descriptions given in the Statistical Account of Bengal compiled by Sir W. W. Hunter from information carefully collected through local officers in the districts where the system exists. When the present Bengal Tenancy Act was under consideration by the Select Committee of the Legislative Council, a memorandum by Mr. Cotton, then a Secretary to the Board of Revenue, was submitted by the Government of Bengal for the information of the Select Committee. Mr. Cotton here reports upon the *utbandi* system and transcribes the passages describing it in the Statistical Account of Bengal in the districts of Nuddea, Jessore, Murshidabad and Pubna ; and he sums up the results. We quote the passage in the Statistical Report relating to the *utbandi* system in Nuddea :—‘*Utbandi* is applied to land held for a year, or rather for a season only. The general custom is for the husbandman to get verbal permission to cultivate a certain amount of land in a particular place at a rate agreed upon. When the crop is on the ground the land is measured and the rent is assessed on it.’ Mr. Cotton says, too, that the *utbandi* raiyat abandons altogether (*i. e.*, has no right to claim again) any land, except such as he has under cultivation in any given year. The *zamindar* may let in *juma* to some one any land which the *utbandi* raiyat has not got under cultivation in any year. Again, in September, 1884, the Commissioner of the Presidency Division submitted to Government an analysis of the reports of his district-officers regarding *utbandi* tenures. The Collector of Nuddea stated that cultivators who take such lands are not obliged to cultivate them a second year ; but as a rule they can keep them for certain for three years, if they elect to do so. Generally, the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so. These descriptions of *utbandi* do

seem to refer rather to particular areas taken for cultivation for limited periods and then given up, than to holdings of which parts are cultivated and other parts lie fallow, while the rent for the whole is assessed year by year with reference to the quantity within the holding under cultivation in that year. A holding of the latter description hardly seems to answer to the general conception of *utbandi*, although the rent may be arrived at each year by ascertaining what area has been cultivated. It is not clear to which description the four bighas of the present suit belong, whether they are part of a larger holding once settled with the plaintiff, or whether they form a separate holding which he has from time to time cultivated on the *utbandi* system during a period which has covered more than twelve years. If it is the former case, his right of occupancy would seem to be complete, but if it is the latter case, we are not prepared to hold that cultivation at various times and under separate agreements on each occasion, such periods not being continuous, although of the same piece of land, would confer the right upon the ground that the first of such periods commenced more than twelve years before the alleged dispossession."

No notice of abandonment need be given.—No notice is required to be given by the tenant to the landlord in abandoning an *utbandi* tenure, as it is a settlement for a year only (*Amrita Lal Mukhurji v. Giridhar Ghosh*, 5 C. L. J., 398 : 11 C. W. N., 581).

Chur or diara land.—The expression *chur* or *diara* land has not been defined in the Act, but *chur*, (or properly *char*) means a sand-bank formed in a river, or which has accreted to its bank; while *diara* means an island formed in the bed of a river. (See Wilson's Glossary). The presumption, which is created by section 20, clause (7) of the Act cannot be applied to land to which section 180 of the Act is applicable. In *diara* or *chur* land the person who alleges that he has been for twelve continuous years in possession, must prove that allegation. The tenants being held to be annual tenants and there being no pre-existing right to the land in the tenants to which any right to the later accretion can be said to be annexed, sec. 4 of Reg. XI of 1825 was held inapplicable (*Beni Prasad Koeri v. Chaturi Tewari*, 33 Cal., 444).

181. Nothing in this Act shall affect any incident of a ghatwali or other service-tenure, or,
Saving as to service tenures. in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Ghatwali tenures.—*Ghatwali* tenures may be divided into two classes, *viz.*, (1) tenures granted for a species of military service to be rendered by guarding the *ghats* or passes on the western frontier of Bengal, and (2) tenures granted on condition of rendering Police service. In their judgment in the case of *Manranjan Singh v. Lilanand Singh*, (3 W. R., 84), which related to a Kharakpore *ghatwali* tenure, Trevor and Campbell, JJ., observed that there appears to be “a considerable variety in the tenures known under the general name of *ghatwali* in different parts of the country. They all agree in this that they are grants of land situated on the edge of the hilly country and held on condition of guarding the *ghats* or passes. Generally, there seem to be a small quit-rent payable to the *samindar* in addition to the service rendered, and with the view of marking the subordination of the tenure. But in some *samindaries* and *patnies* these tenures are of a major, in others, of a minor, character. Sometimes, the tenure of the great *samindar* himself seems to have been originally of this character. More frequently large tenures consisting of several whole villages are held under the *samindar*. In other places, *e. g.*, in Bishenpore, as explained by Harrington (Analysis, Vol. III, p. 510), the sardar and superior *ghatwals* have small and specific portions of land in different villages assigned for their maintenance. These last, says Harrington, are analogous to the *chakuran* assignments of land to village watchmen in other districts. But he goes on to explain that the *ghatwali* tenure differed essentially from the common *chakuran* in two respects:—*First*—that the land is not liable to resumption at the discretion of the landholder, nor the assessment to be raised beyond the established rule; and *secondly*, that although the grant is not expressly hereditary, and the *ghatwal* is removeable for misconduct, it is the general usage on the death of a faithful *ghatwal* to appoint his son, if competent, or some other fit person in his family, to succeed to the office.” In the case of *Lilanand Singh v. Manoranjan Singh*, (3 Calc., 251), Garth, C. J., remarked that “these tenures were created by the Mahomedan Government in early times as a means of providing a police and military force to watch and guard the mountain passes from the invasions of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government, often to persons of high rank, at a low rent or at no rent at all, upon condition that they should provide and maintain a sufficient military force, to protect the inhabitants of the plains from these lawless incursions; and the grantees on their part sub-divided and re-granted the lands to other tenants (much in the same way as military tenures were created in England in the feudal age) each of whom, besides paying generally a small rent, held their lands in consideration of these military services, and provided (each according to the extent of his holding) a specified number of armed men to fulfil the

requirements of the Government." *Ghatwali* tenures originated in Tappah Sarath or Sewrath, Deogarh, which was formerly part of the Birbhum District, but which has now been incorporated with the Sonthal Parganas District. The Birbhum *ghatwali* tenures, have formed the subject of legislation (Reg. XXIX of 1814 and Act V of 1859). *Ghatwali* tenures are also to be found in the districts of Bankura, Bhagalpore, Monghyr, Manbhum, Purneah and Patna. The following rulings relating to such tenures are arranged according to the districts to which the disputed tenures belonged.

Birbhum Ghatwali tenures.—The *ghatwals* of Birbhum are possessed of estates of inheritance without the power of alienation, and this estate cannot be void so long as they perform all the obligations of service and payment of rent incident to their tenures. A perpetual sub-lease granted *bona-fide* by a *ghatwal* will be good not only during the tenancy of the grantee but after his decease during the tenancy of his heirs (*Deputy Commissioner of Birbhum v. Rango Lal Deo*, W. R., F. B., No., 34; *Jogendra Nath Singh v. Kali Charan Rai*, 9 C. W. N., 663). But a different rule on this latter point was laid down in subsequent cases (*Giant v. Bangshi Deo*, 15 W. R., 38; 6 B. L. R., 652; *Jogeshwar Sarkar v. Nimai Karmakar*, 1 B. L. R., s. n., vii and *Narain Mallik v. Badi Rai*, 29 Calc., 227; 6 C. W. N., 94), in which it was ruled that a *ghatwal* is not competent to grant a lease in perpetuity and his successors are not bound to recognize any such incumbrance. Succession to the Birbhum *ghatwali* tenures is regulated by no *kuluchar* or family custom nor by the Mitakshara law, but solely by the nature of the tenure, which descends undivided to the party who succeeds to and holds the tenure as *ghatwal* and who may be a female (*Kastura Kumari v. Manohar Deo*, W. R., Sp. No., 1864, 39). It would be inconsistent with the true character of these tenures to hold that the legislature intended that they should devolve on issue of the body only, and not on heirs generally according to the law which may govern such succession. The word "descendants," therefore in sec. 2. Reg. XXIX of 1814, is not to be construed in its restricted meaning but includes the widow of a deceased *ghatwal*, who may, therefore, be one of the heirs. With reference to the peculiar character of *ghatwali* tenures described in Reg. XXIX of 1814, it would seem that they were intended to be the exclusive property of the *ghatwal* for the time being, and not joint family property (*Chatradhari Singh v. Saraswati Kumari*, 22 Calc., 156). Long continued possession at a uniform rent may lead to the inference of a fixed and permanent *ghatwali* tenure (*Ram Ranjan Chakravarti v. Ram Narain Singh*, 22 Calc., 533; L. R., 22 I. A., 60). Long possession (presumably from the decennial settlement) and gradual cultivation by a *ghatwal* on payment of a quit rent (and not merely possession without cultivation) are evidence of an

implied grant, which protects the *ghatwal* from enhancement or assessment on the land so cultivated (*Erskine v. Manik Singh*, 6 W. R., 10). When it is admitted that a *ghatwal's* estate dates from a time anterior to the decennial settlement and before the creation of the *zamindari*, the tenure is protected from any fresh assessment (*Erskine v. Government*, 8 W. R., 232). As long as such a tenure exists, the presumption under sec. 50 can arise (*Gauri Kant v. Ram Gopal Mukhurji*, 2 C. L. J., 379). *Ghatwali* tenures are not liable to sale or attachment in execution of decrees. The surplus proceeds of such a tenure collected during the life-time of the judgment-debtor are liable to be taken in execution as being personal property, but not profits accumulated after the judgment-debtor's death (*Kastura Kumari v. Binod Ram Sen*, 4 W. R., Misc., 11). The rents of a *ghatwali* tenure are not liable for the debts of the former deceased holder of the tenure (*Binod Ram Sen v. Deputy Commissioner of the Santal Parganas*, 6 W. R., 129 : 7 W. R., 178). The same rule has been held to apply in the case of the *ghatwali* tenures to the south of Birbhum, which are not the subject of express legislation (*Bakra Nath Singh v. Nilmoni Singh*, 5 Calc., 389 : 4 C. L. R., 583 : 9 Calc., 187 : L. R., 9 I. A., 104). A *shikmi ghatwali* tenure held under the superior *ghatwal* is also not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder (*Bali Dobey v. Ganei Deo*, 9 Calc., 388). When a *ghatwal* becomes a defaulter, it is in the power of the authorities under Reg. XXIX of 1814 to transfer his tenure, and that power is not put an end to by the money being offered before the tenure is actually made over to another person (*Chitro Narain Singh v. Assistant Commissioner, Sonthal Parganas*, 14 W. R., 203). Where a permanent tenure has been granted by a *ghatwal*, if the successor of such *ghatwal*, being one of the *ghatwals* to whom Reg. XXIX of 1814 applies, wishes to resume that tenure, he must bring his suit within twelve years after succeeding to the *ghatwali* estate. The possession of the tenant is adverse to him from the time of the decease of his immediate predecessor (*Mudho Kuari v. Ram Chandra Singh*, 9 Calc., 411). Occupancy rights cannot be acquired in *ghatwali* lands (*Upendra Nath Hazra v. Ram Nath Chaudhri*, 33 Calc., 630 ; *Mohesh Manjhi v. Pran Krishna Mandal*, 1 C. L. J., 138).

Digwari.—*Digwari* tenure analogous to *ghatwali* tenure :—incidents of such tenures :—*Brojonath Bose v. Raja Sri Sri Durga Prosad Singh* (33 Calc. 753 : 5 C. L. J. 583).

Chota Nagpur ghatwali tenures—As between two *mal raiyats* with whom a settlement has been made under Reg. III of 1877, there

(1) Cf. *Rajkeshwar Deo v. Bansidhar*, 23 Calc., 873, which, however, relates to a *Kharakpore ghatwali*.

may be a partition of the waste and jungle land, but it cannot be binding on the superior landlord, the *ghatwal*, and will only subsist during the currency of the settlement (*Domin Pandi v. Panchu Kol*, 5 C. W. N., 185).

Kharakpore ghatwali tenures.—Kharakpore *ghatwali* tenures are to be met with in the districts of Bhagalpore and Monghyr. One of the earliest cases which has reference to such tenures is that of *Lilanand Singh v. Government of Bengal*, (6 Moo., I. A., 101 : 4 W. R., P. C., 77), in which their Lordships of the Privy Council decided that the Kharakpore *ghatwali* tenures are perpetual and hereditary grants of land, which cannot be resumed by Government. In *Manoranjan Singh v. Lilanand Singh*, (3 W. R., 84 : 5 W. R., 101 : 13 B. L. R., 124), the *zamindar* having come to an arrangement with Government under which the Government dispensed with the services in consideration of an annual sum to be paid in lieu of these services, the *zamindar* sued to resume the *ghatwali* lands on the ground that the services on which they were held were no longer required. It was decided, however, that the lands could not be resumed and that the *ghatwals* had permanent hereditary tenures at a fixed *jama* and could not be evicted except for misconduct. See also *Manoranjan Singh v. Lilanand Singh*, (2 B. L. R., 125 note : 13 B. L. R., 124), and *Kuldip Narain Singh v. Government* (B. L. R., Sup. Vol., F. B., 559 : 6 W. R., 199 : 11 B. L. R., P. C., 71 : 14 Moo. I. A., 247). But in *Lilanand Singh v. Sarwan Singh*, (5 W. R., 292), it was held on a consideration of the terms of the lease under which the *ghatwal* held the lands that the *zamindar* could resume them, when the *ghatwali* services were no longer required. See also *Lilanand Singh v. Nasib Singh*, (6 W. R., 80) ; *Mahbub Hossain v. Palasu Kumari*, (10 W. R., 179 : 1 B. L. R., A. C., 120). A *ghatwali* estate is not necessarily held by males to the exclusion of females (*Durga Prasad Singh v. Durga Kuari*, 20 W. R., 154). The lands of the *ghatwals* of Kharakpore are not capable of alienation by private sale or otherwise, and are not liable to sale in execution of decrees, except with the consent of the *zamindar* and his approval of the purchaser as a substitute for the outgoing *ghatwal* (*Lilanand Singh v. Durgabati*, W. R., Sp. No., 1864, 249 ; *Gurnun Singh v. Grant*, 11 W. R., 292). After deduction of all necessary outgoings from the total rents due to a *ghatwal*, the residue, being his own personal property, may be attached in execution of a personal decree against him (*Rajkeshwar Deo v. Bansidhar*, 23 Calc., 873). The income of a *ghatwali* property is not itself a *ghatwali* property and is liable to be sold (*Suraj Mal v. Kristo Prasad Singh*, 10 C. W. N., cclx). Future rents and profits that may become due to a *ghatwal* cannot be attached in execution of a decree against him (*Udai Kumari v. Hari Ram Shaha* 28 Calc., 483). In *Anando Rai v. Kali Prasad Singh*, 10 Calc., 677 :

15 Calc., 471), it was held (1) that a *ghatwali* tenure in Kharakpore is transferable, if the *samindar* assents and accepts the transfer, which assent and acceptance may be presumed from the fact of the *samindar* having made no objections to a transfer for a period of over twelve years, and (2) that in dealing with a *ghatwali* tenure the Court must have regard to the nature of the tenure itself, and to the rules of law laid down in regard to such tenures, and not to any particular school of law or the customs of any particular family, and that a *ghatwali*, being created for a specific purpose, has its own particular incidents and cannot be subject to any system of law affecting only a particular class or family. In this case it was pointed out that there is this difference between the *ghatwals* of Birbhum and those of Kharakpore that the former are appointed by Government, and the latter by the *samindar*. In a suit by the *samindar* to enhance the rent it was decided that as long as the *ghatwals* are able and willing to perform the services, the *samindar* has no right to enforce the payment of an enhanced rent on the ground that their services are no longer required (*Lilamand Singh v. Manranjan Singh*, 3 Calc., 251). Any presumption that may be against the right of a *ghatwal* to grant *mukarari* leases cannot hold good against such leases when granted in good faith for the clearance of jungle (*Davies v. Debi Mahitan*, 18 W. R., 377).

Manbhum ghatwali tenures.—A suit for *khas* possession by Government will not lie in respect of *ghatwali* lands admittedly included in a decennially settled estate, though Government may have a right to claim service from the *ghatwals*, and may compel the nomination of *ghatwals* to perform such services (*Gadadpur Banurji v. Government*, 6 W. R. 326); but a suit will lie to assess lands occupied by *ghatwals* in excess of the area recorded in their *ismnavisi* (*Jago Jiwan Lal v. Raghu Nuth Kopat*, 6 W. R., 197). A suit against a *jagirdar* on account of arrears unpaid by his predecessor must fail, unless he is sued as the legal representative of the late *jagirdar*, in which case he may be liable to satisfy the arrears out of any assets, other than the *jagir* which may have come into his hands (*Nilmani Singh v. Madhab Singh*, 1 B. L. R., A. C., 195). A right to re-instate a *ghatwal* in possession of lands cannot exist in the Government, or in any person or body whatsoever (*Anand Kumari v. Government*, 11 W. R., 180.)

Purneah ghatwali tenures.—In a suit in which the plaintiff, an auction-purchaser at a sale for arrears of revenue, sued to resume the lands of a *jagir*, which had been held rent-free by the defendants for nearly a century, it appeared that the lands had been granted by the Government before the Permanent Settlement, as a hereditary *jagir* tenure, in consideration of services which the *jagirdars* rendered to Government in repressing the incursions of wild elephants upon the

cultivated lands of the *samindari*. It was held that, notwithstanding that the lands were the subject of assessment when the *samindari* was permanently settled by Government with the *samindar*, the plaintiff had no right to assess the lands, and that the settlement between the Government and the *samindar* could not affect the rights of the *jagirdars*, whose rights were derived not from the *samindar* but from the supreme authority in the State. It was further decided that the lands held on this tenure, even if *chakaran*, differed from the ordinary *chakaran* lands contemplated by sec. 41, Reg. VIII of 1793, and that the *jagirdars* were bound, if occasion required it, to protect the pargana from the incursions of wild elephants and might forfeit the tenure if they wilfully failed in the performance of that duty, but were not liable to have their lands resumed, because there was no longer any occasion for the performance of the particular service (*Forbes v. Mir Mahomed Taki*, 14 W. R., P. C., 28 : 5 B. L. R., 529 : 13 Moo. I. A., 438).

Patna ghatwali tenures.—A Commissioner of Revenue is not warranted by law on the demise of a *ghatwal* to consider the eligibility of rival claimants to the tenure (a perpetual and descendible one) and to reject the claims of the natural heir on considerations purely moral (*Lal Dhari Rai v. Brajo Lal Singh*, 10 W. R., 401).

Police ghatwali tenures.—The Civil Courts cannot interfere to re-instate a *ghatwal*, who has been dismissed by the Police authorities in the land which he formerly held as *ghatwal*. The right to possess the lands depends on the tenure of the office (*Debi Narain Singh v. Sri Krishna Sen*, 1 W. R., 321). Permanent leases granted by the *ghatwals* of Birbhum prior to the Decennial Settlement for the due performance of the police duties for which the lands were originally granted to the *ghatwals*, and which have been held from generation to generation cannot be set aside at the instance of the present *sirdar ghatwals*. The creation of such under-tenures is not beyond the power of the *ghatwals* (*Makurbhano Deo v. Kastura Koeri*, 5 W. R., 215). The dismissal of a *ghatwal* will carry with it the forfeiture of his tenure (*Secretary of State v. Pcran Singh*, 5 Calc. 740).

Service tenures.—The law relating to *chaukidari chakaran* lands is to be found in sec. 41, Reg. VIII of 1793, and Act VI of 1870 (B. C.) Part II, ss. 48-61. In *Jai Krishna Mukhurji v. Collector of East Burdwan* (1 W. R., P. C., 26 : 10 Moo. I. A., 16), it was explained that before the British possession of India the *samindars* were entrusted as well with the defence of the territory against foreign enemies as with the administration of law and the maintenance of peace and order within their district ; that for this purpose they were accustomed to employ not only armed retainers, but also a large force of *thanadars* or a general police force, and other officers in great numbers under the names of

chaukidars, *paiks* and other descriptions as well for the maintenance of order as for the protection of the property of the *zamindar*, the collection of his revenue and other services personal to the *zamindar*. All these different officers were at that time the servants of the *zamindar*, appointed by him and removeable by him, and they were remunerated in many cases by the enjoyment of land rent-free or at a low rent in consideration of their services. The lands so enjoyed were called *chakaran* or service lands. The effect of the decennial settlement was to divide them into two classes; (1) *thanadari* lands, which by Reg. I of 1793, sec. 8, cl. 4, were made resumable by the Government; (2) all other *chakaran* lands, which by Reg. VIII of 1793, sec. 41, were, whether held by public officers or private servants in lieu of wages, to be annexed to *malguzari* lands and declared responsible for the public revenue assessed on the whole estate. The mere fact of long prior possession of a service tenure on no rent at all gives the holder no exemption from the payment of rent when the service is no longer required or performed (*Chandra Nath Rai v. Bhim Sardar*, W. R., Sp. No., 1864, Act X, 37). Where the original donee of a service tenure ceases to do any service and pays in lieu a rent, which his descendants continue to pay, the condition of the tenure becomes altered from service to rent (*Mahendra Singh v. Jokha Singh*, 19 W. R., 211). Where a *sanad* granted to the holder of a *jagir* was only a confirmation by the Government and the *zamindar* of the tenure under which the *jagir* was held and authorized the *jagirdar* to remain in possession but did not describe the service he was bound to perform, it was held that the *zamindar* could not resume the land without proof that the services to be performed were personal services only to the *zamindar* (*Nil Mani Singh Deo v. Government*, 18 W. R., 321; 6 W. R., 121). A grant to a man and his heirs on condition of performing service does not in general mean that the service is to be personally performed by the grantee or his heirs, but that the grantee is to be responsible for its performance (*Shib Lal Singh v. Murad Khan*, 9 W. R., 126). A distinct refusal by a tenant to perform services incidental to the holding renders him liable to ejectment, and it would seem that no rights of occupancy can accrue in lands held under a service tenure (*Haro Gobind Raha v. Ram Ratno De*, 4 Calc., 67). A service tenure created for the performance of services, private or personal to the *zamindar*, may be resumed by the *zamindar*, when the services are no longer required, or when the grantee of the tenure refuses to perform them. But a *zamindar* is not entitled to resume when the grant is for services of a public nature. There is also a distinction between the grant of an estate burdened with a certain service and that of an office, the performance of whose duties is remunerated by the use of certain lands. In the former case the *zamindar* is not ordinarily entitled to resume, while in

the other case he may do so when the office is terminated (*Radha Prasad Singh v. Badhu Doshud*, 22 Calc., 938. See also *Bhimapuriya v. Ram Chandra*, 22 Bom., 422). When lands are held upon a grant subject to a burden of service and not merely in lieu of wages, as long as the holders of the grant are able and willing to perform the services, the *samindar* has no right to put an end to the tenure whether the services are required or not (*Vencata Narasinha Rao v. Sobhanadri Appa Rao*, 10 C. W. N., 161 : 3 C. L. J., 1). Land ceases to be *chaukidari chakaran* land when Government transfers it to the *samindar* (*Ram Ranjan Chakravarti v. Janoki Nath Pal*, 4 C. W. N., lxiv), who can dispose of it as he pleases (*Janab Ali v. Rakibuddin Mullik*, 9 C. W. N., 571 : 1 C. L. J., 303 ; *Trailokhyo Nath Chaudhuri v. Ram Dayal Samanta*, 10 C. W. N., lxxvii). They should be transferred not to the *samindar* of the village in which they are situated, but to the *samindar* of the estate to which the lands appertain (*Pratap Narain Mukhurji v. Secretary of State*, 3 C. L. J., 530 : 10 C. W. N., 637 : 33 Calc., 390). When *chaukidari chakaran* lands are transferred by Government to the *samindari*, and the *samindari* has been let in *patni*, the lands pass to the *patnidar*, if not excepted from his lease (*Girish Chandra Rai v. Hem Chandra Rai*, 2 C. L. J., 21 n). The Courts must look at the contract between the parties to see what their intention was with regard to such lands (*Pursottam Basu v. Khetra Prasad Basu*, 5 C. L. J., 143). When a *patnidar* sought to have transferred to him certain *chaukidari chakaran* lands which the Government had settled with the *samindar* under Act VI of 1870, B. C., and when it was found that the lands were part of the plaintiff's *patni*, and that the landlord had sub-let the land to a tenant, it was held (1) that the *patnidar* was entitled to possession but not to *khas* possession of the lands : (2) that the tenant with whom the lands had been settled by the *samindar* was entitled to retain actual possession of the lands, and (3) that the *patnidar* was bound to pay the *samindar* such rents for those lands as corresponded to the proportion between the Government collections and the *patni* rent formerly payable by him (*Hari Narain Mazumdar v. Mukund Lal Mandal*, 4 C. W. N., 814). Certain *chaukidari chakaran* lands were resumed by the Government and made over to the *samindar* who allowed the defendants to remain on the land and accepted rent from them. The plaintiff *patnidar* was entitled by his *patni* lease to all resumed land : *held*, that the plaintiff was entitled to eject the defendants (*Upendra Narain Bhattacharya v. Pratap Chandra Pradhan*, 8 C. W. N., 320 : 31 Calc., 703. See also *Newaz Khodu v. Ram Jadu Dey*, 34 Calc., 109). When *chaukidari chakaran* lands, after resumption and transfer to the *samindar*, have been sold for non-payment of the Government assessment, both the *samindar* and the *patnidar* are entitled to share in the surplus sale proceeds, provided the lands are included within

the *patni* grant (*Haridas Goswami v. Nistarini Gupta*, 1 C. L. J., 102 n). A right of occupancy may be acquired under section 6 Act, X of 1859 even in *chaukidari chakaran* land (*Ram Kumar Bhattacharji v. Ram Newaz Rajguru*, 31 Calc., 1021 : 8 C. W. N., 860), but not by the under-tenant of a holder of service tenure (*Mritanjai v. Kenatulla*, 11 C. W. N., 46 : 5 C. L. J., 53).

Onus of proof.—Long possession of lands as *chaukidari chakaran* lands affords ground for the presumption that the lands were set apart as such at the decennial settlement. The onus of proof that the lands were the private lands of the *zamindar*, not set apart at the decennial settlement as *chrukidari chakaran*, is on the *zamindar*, (*Muktakeshi Debi Chaudhurani v. Collector of Murshidabad*, 4 W. R., 30). The onus is upon an auction-purchaser who seeks to dispossess or to rack-rent grantees under *sanads* to make out a clear case for resumption (*Fortes v. Mir Mohomed Taki*, 14 W. R., P. C., 28 : 5 B. L. R., 529 : 13 Moo. I. A. 438). When a plaintiff sues for the recovery of possession of land alleging it to be *chaukidari chakaran* land, lying within his *zamindari*, which the Collector has transferred to him, it lies on him to prove so much of his case as is not admitted by the defendant (*Norendra Lal Khan v. Jogi Hari*, 2 C. L. J., 107). A purchaser of an estate at a revenue sale acquires no title to resume *chaukidari chakaran* land, which is held by the *zamindar* on a different title (*Kashim v. Prasanna Kumar Mukhurji*, 10 C. W. N., 598 : 5 C. L. J., 299).

Proof of adverse possession of service tenures.—When lands are held as remuneration for services, the fact that no services have been performed does not of itself make the holding adverse : to make the holding adverse, there must be a refusal to perform service or a claim to hold the lands free of service (*Komaragowdu v. Bhimaji*, 23 Bom., 602).

Ejectment of service tenure-holders.—Service tenures are excepted from the operation of sec. 89 of this Act, and holders of such tenures can, therefore, be ejected otherwise than in execution of a decree (*Mukbul Hossain v. Amir*, 25 Calc., 131). They can be ejected without the service on them of a notice to quit or of a notice under s. 155 (*Bonerji v. Akbal Jamadar*, 1 C. L. J., 16 n ; *Ansar Ali v. Grey*, 2 C. L. J., 403 ; *Ananda Moyi v. Lahshi Chandra*, 3 C. L. J., 274 : 33 Calc, 339). One co-sharer cannot bring a suit for the partial ejectment of a tenant who holds the land in lieu of services (*Ghulam Mohiuddin v. Khairan*, 8 C. W. N., 325 : 31 Calc., 786).

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the home-

Homesteads.

stead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Effect of this section.—This section does not apply to tenants in general, but only to raiyats (1) [sec. 5 (2)]. When a raiyat holds his homestead as a part of his holding as a raiyat, the provisions of this Act apply both to his homestead, and to his agricultural land. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the provisions of this Act are still applicable to both, but are liable to be overridden by local custom or usage. In one case a raiyat was a settled raiyat (sec. 21) in respect of some agricultural land in a village. He then took a plot of homestead land in the village, but distinct from his agricultural land. He held this homestead land for three years, when the landlord sued to eject him. It was decided that, there being no local custom or usage to the contrary, the provisions of this Act were applicable, and under secs. 21 and 182 he had occupancy rights in the homestead land and was a settled raiyat in respect to it as well as to his agricultural holding. It further appeared that he had bound himself by the terms of his lease to give up the land on the expiry of a certain period, but this was held to be immaterial, as under sec. 178(1) (a) and (b) he could not contract himself out of his rights as an occupancy raiyat (S. A., No. 1078 of 1892, decided, 16th may 1893). Under the old law, too, it was held that when the rent of *bastu* lands was paid by the raiyats to their landlord separately from the rent paid for cultivated lands, but the tenure of the *bastu* lands was a raiyati tenure, this did not exclude those lands from the operation of Act VIII of 1869, B. C. (*Pogose v. Raju*, 22 W. R., 511). The provisions of this Act are not applicable to land granted for building purposes and for the establishment of a coal depot (*Raniganj Coal Association v. Jadu Nath Ghosh*, 19 Calc., 489). See note, p. 23.

In *Hassan Ali v. Govinda Lal Basak* (9 C. W. N., 141), it is said by Mitra J., that the Act has of course no operation as regards homestead lands situated in towns or outside towns. But see note below, and note on "*Occupancy rights in homestead land*," p. 570.

When homestead land is part of raiyati holding and when not.—Under the former law, it was decided that where the principal subject of the entire occupation is *bastu* land, the residue (if any) of the holding being entirely subordinate, the Small Cause Court has jurisdic-

(1) As to the position of residents of a village, who are not raiyats, see note, p. 19.

tion. But when the principal subject is agricultural land, the buildings being mere accessories thereto, the Small Cause Court will not have jurisdiction (*Chandessari v. Ghinah Pandey*, 24 W. R., 152). Under the present Provincial Small Cause Court Act (IX of 1887), however, a Mofussil Small Cause Court has no jurisdiction to entertain suits for arrears of rent of homestead or *bastu* land (*Uma Charan Mandal v. Bijari Bewa*, 15 Calc., 174); so that the Court in which an action for arrears of rent will lie will no longer be any guide as to whether homestead land is part of a raiyat's holding as a raiyat or not. This is a question of fact, which must be decided on the evidence given in each case. In the case of *Abdul v. Kutban*, (1 C. W. N., clxxi), the defendant No. 5 had a raiyati holding and some homestead land with a house on it in a certain village. He sold both to the defendant No. 6, who again sold only the *bastu* land and the house to the plaintiff. The plaintiff was dispossessed by the landlord of the village and sued to recover possession. In this case it was ruled that as the plaintiff did not claim to recover possession as an occupancy raiyat, and as upon the facts it appeared that he did not hold the homestead as part of his own *jote*, and the agricultural lands of the original tenant (the defendant No. 5) had not been sold to him, he could not be said to be a raiyat in respect of the homestead lands.

The provisions of this section are applicable whether the homestead and the *raiya*ti holdings are held under the same or different landlords (*per Geidt J.*, in *Pratap Chandra Das v. Biseswar Paramanik*, 9 C. W. N., 416). It is not required by section 182 that a tenant in occupation of homestead land should be a raiyat of the village in which the homestead is situated, nor is it necessary for him to be the tenant under the same landlord as the landlord of the homestead land (*Kripa Nath Chakravartti v. Anu*, 10 C. W. N., 944 : 4 C. L. J., 332). This would seem to be at variance with the view expressed in *Kuldip Singh v. Chhatur Singh Rai* (3 C. L. J., 285, see *ante*, p. 99).

Local custom or usage relating to homestead land.—The only local custom or usage concerning homestead land of which any trace is to be found in the judicial decisions of the Courts is a custom of transferability, which it would appear may exist in some districts. See *Chandra Kumar Rai v. Kadirmani Dasi*, 7 W. R., 247 ; *Beni Madhub Banurji v. Jai Krishna Makhurji*, 7 B. L. R., 152 : 12 W. R., 495 ; *Durga Prasad Misra v. Brindaban Sukal*, 7 B. L. R., 159 : 15 W. R., 274 ; *Shama Sundari Debi v. Nobin Chandra Kolya*, 6 C. L. R., 117 ; *Hari Nath Karmokar v. Raj Chandra Karmokar*, 1 C. W. N., cxxxvi : 2 C. W. N., 122. But these cases do not establish the prevalence of such a custom with regard to the class of homestead land to which this Act

is applicable. In *Chandra Kumar Rai v. Kadirmani Dasi*, (7 W. R., 247), the raiyat was a tenant of *khudkasht* land, who had built a *pukka* house, and had acquired a right of occupancy in the land under Act X of 1859. In the case of *Beni Madhab Bagurji v. Jai Krishna Mukhurji* (7 B. L. R., 152 : 12 W. R., 495), it was held that by the custom of the Hooghly district a tenure granted for building purposes is transferable. Peacock, C. J., went further and said that in his opinion "if one man grants a tenure to another for the purpose of living upon the land, that tenure, in the absence of any evidence to the contrary, would be assignable," that is, otherwise than by custom. This, however, is an *obiter dictum* and the land in dispute in this case was evidently non-agricultural. In the case of *Durga Prashad Misra v. Brindaban Sukal*, (7 B. L. R., 159 : 15 W. R., 274), the tenant had been allowed to erect mud houses and to plant trees on the land without objection on the part of the landlord and had occupied the land for forty years, and it was held that his holding was not a temporary one. In this case, too, the land appears to have been non-agricultural. In the case of *Shama Sundari Debi v. Nobin Chandra Kolya*, (6 C. L. R., 117), also, the land had been taken for the erection of a dwelling house and it was ruled that it was transferable by local custom, though held on a non-permanent tenure. It was also decided that the landlord could evict the tenant by service on him of a sufficient notice to quit. In *Hari Nath Karmokar v. Raj Chandra Karmokar*, (1 C. W. N., cxxxvi : 2 C. W. N., 122), it was said that previous to the passing of the Transfer of Property Act, non-agricultural lands might or might not have been assignable. The incident of non-transferability is common to tenancies from year to year of homestead lands created before the passing of the Transfer of Property Act in the absence of a custom to the contrary (*Madhu Sudan Sen v. Kamini Kunta Sen*, 32 Calc., 1023 : 9 C. W. N., 895).

Occupancy rights in homestead land.—Under the former law rights of occupancy could not be acquired in land occupied exclusively by buildings (*Sarno Mayi v. Blumhardt*, 9 W. R., 552 ; *Mohar Ali v. Ram Ratan Sen*, 21 W. R., 400), or of which the main object of occupation was the dwelling house (*Kali Krishna Biswas v. Junki*, 8 W. R., 250) or in any land, except land of which the main object was cultivation (*Ramdhan v. Haradhan Paramanik*, 12 W. R., 404 : 9 B. L. R., 107, note). But now under this Act, provided a tenant is a raiyat, he may acquire a right of occupancy in his homestead land, whether it be held as part of his agricultural holding or not, unless there be a local custom or usage to the contrary. Rights of occupancy cannot be acquired in suburban lands let for purposes of building (*Rakhal Das Addi v. Dinamayi Debi*, 16 Calc., 652). In this case the tenant was clearly not a raiyat.

Enhancement of rent of homestead land.—Under the former law it was held that the rent of *bastu* or homestead land, when it is part of the raiyat's *jote* or holding is as liable to enhancement under Act X of 1859 as the rent of any other land (*Naimudin Joardar v. Scott Moncrieff*, 3 B. L. R., A. C., 283 : 12 W. R., 140 ; *Abdul Hamid v. Dongaram Dey*, 3 B. L. R., App. 133) ; but *bastu* or homestead land used for sites of houses in a town cannot form the subject of suits under Act X of 1859 for enhancement. See note to sec. 3 (3), pp. 19—23. The only change made by this Act in the law on this point is, as already pointed out, that when the homestead is held otherwise than as part of the raiyat's agricultural holding, the provisions of this Act relating to enhancement of rent are liable to be over-ridden by local custom or usage ; and further, that in one instance the Act apparently provides for the enhancement under its provisions of the rent of land occupied by buildings ; for under sec. 167, sub-sec. (4), a purchaser of a tenure or holding sold in execution of a decree for arrears of the rent thereof may, if he has power to avoid all incumbrances, sue to enhance the rent of land which is the subject of a "protected interest," as defined in sec. 160, clause (c), *i. e.*, "any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made." Where the subject matter of a tenancy is *bastu* land situated in a municipality to which the provisions of the Bengal Tenancy Act are not applicable, a suit for enhancement of rent brought by a landlord without previously serving the tenant with a notice to quit or to pay rent at an enhanced rate must fail (*Krishna Kant Saha v. Krishna Chandra Rai*, 9 C. W. N., 303.)

Ejectment of tenant from homestead land.—Subject to local custom or usage, when homestead land is held otherwise than as part of the raiyat's agricultural holding, a raiyat can be ejected from his homestead land on the same grounds as those on which he can be ejected from his other land (*vide* secs. 10, 18, 25, 44 and 49). One of the grounds on which occupancy and non-occupancy raiyats can be ejected is that they have used the land of the holding in a manner which renders it unfit for the purposes of the tenancy, and therefore it would *prima facie* appear that when a raiyat has erected buildings or permanent structures on agricultural land, he is liable under the provisions of this Act to be ejected, provided always that the landlord has not stood by and passively acquiesced in the construction of the houses (*Shib Das Bandopadhyaya v. Baman Das Mukhopadhyaya*, 8 B. L. R., 237 : 15 W. R., 360). The construction of a *suitable* dwelling house for the raiyat and his family together with all necessary out-offices is, however, an "improvement" [sec 76 (2) (f)], and cannot render a raiyat liable to ejectment. And in *Prasanno Kumar*

Chaturji v. Jagannath Basak, (10 C. L. R., 25) it was held that where land has with the consent of the landlord ceased to be agricultural, and the tenant has since built a homestead or used part of it for tanks or gardens or other purposes as well as for agriculture, the nature of the tenure is not thereby changed, nor is the tenant deprived of any right of occupancy which he may have acquired. On the other hand, the mere record of the name of a tenant, who is found in occupation of a particular piece of homestead land, and of the rent payable by him, in settlement proceedings does not invest him with any permanent title to hold it (*Arat Sahu v. Prandhan Paikura*, 10 Calc., 502).

There are a considerable number of cases concerning the ejectment of tenants from homestead land of a non-agricultural character. In many of them the Courts have refrained from giving decrees for ejectment against the tenants on the ground that in the circumstances a presumption might be made that the tenant's leases were of a permanent nature. But the rulings as to the circumstances in which such a presumption may be made are conflicting. In several it has been laid down that mere long possession or the mere construction of buildings on the land will not justify the raising of any such presumption (*Additio Charan De v. Peter Das*, 17 W. R., 383 : 13 B. L. R., 417 note ; *Prasanno Kumar Debi v. Ratan Baipari*, 3 Calc., 696 : 1 C. L. R., 577 ; *Tarak Paddo Ghosal v. Shama Charan Napat*, 8 C. L. R., 50 ; *Prasanno Kumar Chaturji v. Jagannath Basak*, 10 C. L. R., 25 ; *Rakhal Das Addi v. Dinamayi Debi* 16 Calc., 652). There appears to be only one case in which mere long possession has been held sufficient to warrant the presumption of a tenure being of a permanent and transferable nature, viz., *Dunne v. Nabo Krishna Mukhurji*, (17 Calc., 144). In the other cases in which the Courts have presumed that the tenants had a permanent interest in the land (viz., *Beni Madhab Mukhurji v. Jui Krishna Mukhurji*, 7 B. L. R., 152 : 12 W. R., 495 ; *Durga Prasad Misra v. Brindaban Sukal*, 7 B. L. R., 159 : 15 W. R., 274 ; *Braja Nath Kundu v. Stewart*, 16 W. R., 216 : 8 B. L. R., App., 51 ; *Johari Lal Sahu v. Dear*, 23 W. R., 399 ; *Gopi Chand v. Liakat Hossain*, 25 W. R., 211 ; *Gangadhar Shikhar v. Ayimudin Shah Biswas*, 8 Calc., 960 : 11 C. L. R., 281 ; *Ranga Lal Lohia v. Wilson*, 26 Calc., 204 : 2 C. W. N., 718), the lands had either been originally let for building purposes or the tenant had to the knowledge of the landlord and without objection on his part erected *pukka* buildings or spent large sums of money in improvements of a substantial character. Most of these cases are discussed in *Nabu Mandal v. Cholim Mallik*, (25 Calc., 896), in which it was held that mere long possession was not sufficient to justify the presumption of the tenure being of a permanent and transferable nature. In *Krishna Kishor Neogi v. Mir Mahomed Ali*, (3 C. W. N., 255), it was said that a landlord

by merely not objecting to his tenant's raising a *pukka* building does not confer on the tenant a permanent right to remain on the land, and though long possession coupled with the acquiescence of the landlord in the raising of *pukka* buildings and his receiving rent after such buildings, have been raised may justify the inference that a tenant has such a right, yet if the landlord's interest was let out in *ijara* at the time the building was raised, the absence of objection on his part should not be construed as amounting to acquiescence. Then, in *Ismail Khan v. Jaigun Bibi*, (27 Cal., 570 : 4 C. W. N., 216), it was held that in a suit for ejectment which a tenant resists on the ground that the tenancy is a permanent one, and that the landlord stood by and permitted him (the tenant) to erect *pukka* buildings on the land in the belief that the said tenancy was a permanent one, it is incumbent on the tenant to show that in erecting the buildings he was acting under an honest belief that he had a permanent right in the land, and that the landlord, knowing that he (the tenant) was acting under such belief, stood by and allowed him to go on with the construction of the building. See also *Ismail Khan v. Broughton*, 5 C. W. N., 846). The Privy Council, too, on the authority of *Ramsden v. Dyson*, (L. R., 1 H. L., 129), has laid down that lessors are not estopped in equity from bringing suits for ejectment merely by reason of their tenants having erected permanent structures on the land with the knowledge of and without interference by the lessors (*Beni Ram v. Kundan Lal*, L. R., 26 I. A., 58 : 21 All., 496 : 3 C. W. N., 502).⁽¹⁾

But in *Durga Mohan Das v. Rakhal Chandra Rai*, (5 C. W. N., 801), it was held that the fact of long possession and instances of transfer and succession may raise a presumption in favour of the permanency of a tenure, and in *Ismail Khan v. Aghore Nath Mukhurjee*, (7 C. W. N., 734) that in the absence of words importing it, the hereditary character of a tenure may be supplied by the evidence of long and uninterrupted enjoyment and of the descent of the tenure from father to son. The mere fact of an acceptance of rent at the same rate for a long period of years would not be conclusive against the landlord to show that a lease was of a permanent nature, if the origin of the lease be known, but the circumstances of a particular case may properly lead to such an inference, each case depending upon its own circumstances (*Winterscale v. Sarat Chandra Banurji*, 8 C. W. N., 155). Where the land was let as garden land with the special reservation regarding trees, the fact that it was used as *bastu* land for the last 40 years does not make it permanent (*Debnarain v. Baidya Nath*, 13 C. W. N., ccii).

The facts of long possession of a tenancy by the tenants and their ancestors and of the landlord having permitted them to build a *pukka* house,

(1) But compare *Saifdar Ali v. Jee Narain Singh*, 16 W. R., 161 ; *Uda Begum v. Imam-uddin*, All., 82 ; *Kunhammed v. Narayanan Mussad*, 12 Mad., 320 ; *Onkarapu v. Subaji Pandurang*, 15 Bom., 71 ; *Premji Jivon Bhat v. Guseum Juma Ahmed*, 20 Bom., 298.

which has existed for a very considerable time and which was added to by successive tenants and of the tenure having been from time to time transferred by succession and purchase, in which the landlord acquiesced or of which he could not have been ignorant are sufficient to warrant the Court in presuming that the tenancy is of a permanent nature (*Caspersz v. Kedar Nath Sarbhadhikari*, 28 Calc., 738 : 5 C. W. N., 859. See also *Ismail Khan v. Mrinmayi Dasi*, 8 C. W. N. 301 ; *Ismail Khan v. Asmatulla*, 8 C. W. N., 297 : *Upendra Krishna Mandal v. Ismail Khan*, 32 Calc., 41 : 8 C. W. N., 889 ; *Nil Ratan Mandal v. Ismail Khan*, 32 Calc., 51 : 8 C. W. N., 895 : *Promoda Nath Rai v. Srigobinda Chaudhuri*, 32 Calc., 648 : 9 C. W. N., 463 : *Grant v. Robinson*, 11 C. W. N., 243 : 5 C. L. J., 178 ; *Naba Kumari Debi v. Bihari Lal Sen*, 6 C. L. J., 122 : 34 Calc., 902 ; *Surja Kanto Acharyj v. Bhaba Parsad Khan*, 13 C. W. N., CCXXXVI). And payment of an unaltered rent for over 60 years during which the tenancy has existed strengthens such presumption which is not rebutted merely because of a provision in the *kabulyat* that on a transfer by assignment one-fourth of the purchase money should be paid to the landlord (*Nemai Charan Bose v. Mahomed Basir*, 9 C. L. J., 475).

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or by usage, accordingly, wherever it exists, will not be affected by this Act.

Effect of custom.—According to the terms of this section, “custom, usage, or customary right” will prevail over the provisions of this Act, provided the custom, usage or customary right is not inconsistent with them, or is not expressly or impliedly modified or abolished by anything in the Act. This is in accordance with the general principle

laid down by their Lordships of the Privy Council in the case of *Nilkrishna Deb Barmano v. Bir Chandru Thakur*, (12 Moo. I. A., 523 : 12 W. R., P. C., 21 : 3 B. L. R., P. C., 13), "that where a custom is proved to exist, it supersedes the general law, which however, still regulates all beyond the custom." This rule was again enunciated in the Privy Council case of *Sartaj Kuari v. Dearaj Kuari*, (10 All., 272 : L. R., 15 I. A., 51). The law appears to have been the same, while the former Rent Acts were in force, for it was said by Peacock, C. J., in the case of *Thakurani Dasi v. Bisheshar Mukhurji* (B. L. R., F. B., 326 : 3 W. R., Act X, 29), "that Act X of 1859 did not take away the right of any raiyat who had a right by grant, contract, prescription, or other valid title, to hold at a fixed rate of rent." "The mode of proving custom is not very well understood in this country," it is observed in the Rent Law Commissioner's Report, para 12, "and unfortunately, notwithstanding a *dictum* of Sir Barnes Peacock to the contrary, an idea got to prevail, that Act X had superseded all customs, and was intended to do away with all agricultural rights, except those especially mentioned and provided for in that Act. We believe that there are many local customs in this as well as in every other country, well understood by the people, recognized by the landlords, and susceptible of proof in the Courts of Justice, and we think it very desirable to make it clearly understood that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions."

The provisions of these sections are apparently intended to give effect to these views of the Rent Law Commissioners.

Elements of custom—For the rules of English law as to custom, see Broom's Legal Maxims, 5th edition, p. 917. The Indian cases on this subject are as follow. In the case of *Har Prasad v. Sheo Dyal* (26 W. R., 55 : L. R., 3 I. A., 285), their Lordships of the Privy Council have said that "a custom is a rule, which, in a particular family or district, has from long usage, obtained the force of law. It must be ancient, certain, and reasonable and, being in derogation of the general rules of law, must be construed strictly." In *Kastura Kumari v. Manohur De*, (W. R., Sp. No., 1864, 39) it is held that "where it is ancient, invariable and established by clear and positive proof, it over-rides the usual law of inheritance." It is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable : and it is further essential that they should be established to be so by clear and unambiguous evidence (*Ramalakshmi Ammal v. Sivananantha Perumal Sethurayer*, 12 B. L. R., 396 : 14 Moo. I. A., 570 : 17 W. R., 553). In *Lala v. Hira Singh*, 2 All., 49) Oldfield, J., observed :—"Amongst the conditions essential for establishing a custom are that the custom must be of remote

antiquity, that it has been continued and acquiesced in, that it is reasonable and is certain and not indefinite in its character. Again, in *Beni Madhab Banurji v. Jai Krishna Mukhurji*, (7 B. L. R., 152 : 12 W. R., 495), Glover, J., pointed out that "a custom must be proved by strict evidence that what is sought to be established has existed unaltered and uninterrupted from time immemorial." In a recent case, however, (*Kuar Sen v. Mamman*, 17 All., 87), the Allahabad High Court dissented from this view, and said :—"We cannot in these provinces apply the principle of the English Common Law that a custom is not proved, if it is not shown to have been immemorial. To apply such a principle would be to destroy many customary rights of modern growth in villages and other places." The necessity for a custom being certain has been dwelt on in several cases besides *Lala v. Hira Singh*. Thus, in *Lachman Rai v. Akbar Khan*, (1 All. 440) Turner, J., observed ; "A custom to be good must be definite." In *Jamila Khatun v. Pagal Ram*, (1 W. R., 250) it is said :—"The plaintiff relies upon a custom, and unless he can show that the custom is undoubted and invariable he is not entitled to a decree." (See also *Bhagwan Das v. Balgovind Singh*, 1 B. L. R., s. n., 9). In *Chandra Kumar Rai v. Piari Lal Banurji*, (6 W. R., 190) however, Trevor and Campbell, JJ., laid down that a custom as to the transferability of *khudkasht jotes* in Hooghly need not be absolutely invariable but Glover J., in *Beni Madhab Banurji v. Jai Krishna Mukhurji*, said he had doubt as to the correctness of this decision. In *Kuar Sen v. Mamman* (17 All. 87), it was said :—"A local custom to have the effect of excluding or limiting the operation of the general rules of law must be reasonable and certain." Then, in *Lachmipat Singh v. Sadatulla Nashyo*, (9 Calc., 698 : 12 C. L. R. 382), the necessity for a custom being reasonable was insisted on. In this case, the defendants alleged that they had by custom a right to fish in the plaintiff's *beels*. But it was held that this custom could not be treated as a valid custom on account of its unreasonableness. "There was no limitation," it was said, "to the number of persons entitled to enjoy it. The tenantry may increase to any number, so that according to this custom an unlimited number of persons can take away the profits of a private property, and that nothing may be left to the owner . . . Such a custom as this does not seem to be reasonable and ought to be rejected as invalid." Other instances of customs being held to be unreasonable will be found in the cases of *Ransordas Bhogilal v. Kesrising Mohan Lal* (1 Bom. H. C. 229) ; *Arlapa Naik v. Narsi Keshavji & Co.* (8 Bom. H. C. Rep. A. C., 19) ; *De Souza v. Pestunji Dhanjibhai*, (8 Bom., 408). In a suit in Madras in which the dancing girls of a temple claimed to have by custom a vote upon the introduction of any new dancing girls into the service of that temple, it was held that such a custom could not be recognized on account of its immorality, as it

depended upon an association of women to enjoy a monopoly of the gains of prostitution (*Chinna Ummayi v. Tegurai Chetti*, 1 Mad., 168).

Proof of custom.—In *Doe. d. Jago Mohan Rai v. Nima Dasi*, (Montrieu's cases of Hindu Law, 596) Grey, C. J., observed :—"Although in this country we cannot go back to that period which constitutes legal memory in England, *viz.*, the reign of Richard I, yet still there must be some limitation, without which a custom ought not to be held good. In regard to Calcutta, I should say, that the Act of Parliament in 1773, which established this Supreme Court, is the period to which we must go back to find the existence of a valid custom . . . In regard to the mofussil, we ought to go back to 1793. Prior to that date there was no registry of the regulations, and the relics of them are exceedingly loose and uncertain. I admit that a usage for twenty years may raise a presumption in the absence of direct evidence of a usage existing beyond the period of legal memory." But in *Jai Krishna Mukherji v. Durga Narain Nag*, (11 W. R., 348), it was held that "in an enquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary: there is no necessity for the witnesses to fix any particular time from which such tenures became transferable." In *Lachman Rai v. Akbar Khan*, (1 All., 440), Turner J., said :—"The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by judicial or revenue records, or private accounts and receipts that the custom has been enforced." The acts required for the establishment of customary law should be plural, uniform and constant. They may be judicial decisions, but these are not indispensable for its establishment, although some have thought otherwise. The authors of the acts must have performed them with the consciousness that they spring from a legal necessity. To prove a local custom the evidence must be precise and conclusive (*Durga Prasad Singh v. Durga Kuari*, 20 W. R., 154). What the law requires before an alleged custom can receive the recognition of the Court and so acquire legal force, is satisfactory proof of usage so long and invariably acted upon in practice as to show that it has, by common consent, been submitted to as the established governing rule of the particular family, class, or district of country; and the course of practice upon which the custom rests, must not be left in doubt but be proved with certainty (*Perumal Sethurayar v. Ramalinga Sethurayar*, 3 Mad. H. C. Rep 77). In *Kuar Sen v. Mamman*, (17 All., 87), it was observed that a local custom as a general rule is proved by good evidence of a usage which has obtained the force of law within the particular district,

city, *mahalla* or village, or at the particular place, in respect of the persons and things which it concerns. Where it is sought to establish a local custom by which the residents, or any section of them, of a particular district, city, village or place are entitled to commit, on land not belonging to or occupied by them, acts which, if there was no such custom, would be acts of trespass, the custom must be proved by reliable evidence of such repeated acts openly done, which have been assented and submitted to, as leads to the conclusion that the usage has by agreement or otherwise become the local law of the place in respect of the persons or things which it concerns. In order to establish a customary right to do acts which would otherwise be acts of trespass on the property of another, the enjoyment must have been as of right, and neither by violence nor by stealth nor by leave asked from time to time. The statute law of India does not prescribe any period of enjoyment during which in order to establish a local custom it must be proved that a right claimed to have been enjoyed as by local custom was enjoyed. And in our opinion it would be inexpedient and fraught with the risk of disturbing perfectly reasonable and advantageous local usages regarded and observed by all concerned as customs to attempt to prescribe any such period. But general custom is not proved by the statements of two individuals, or by proving that two particular tenants paid at a particular rate (*Prabhu Dass v. Sheo Nath Rai*, W. R., Sp. No., 1864, Act X, 27), nor a local custom by the evidence of a few antagonistic witnesses (*Jai Krishna Mukhurji v. Raj Krishna Mukhurji*, 1 W. R., 153).⁽¹⁾ The proceedings of two former suits where under similar circumstances a right of pre-emption was admitted to exist may be received as evidence of such a custom (*Madhub Chandra Nath Biswas v. Tomi Bewa*, 7 W. R., 210). Decrees passed in favour of such a custom are admissible to prove its existence (*Gurdayal Mal v. Jhanda Mal*, 10 All., 585). But the conflicting decisions of subordinate Courts will not prove a custom (*Indra Narain Chaudhuri v. Mahomed Naziruddin*, 1 W. R., 234). A *wajib-ul-arz* prepared and attested according to law is *prima facie* evidence of the existence of any custom which it records (*Isri Singh v. Ganga*, 2 All., 876; *Mahammad Hosain v. Munna Lal*, 8 All., 434). But a *wajib-ul-arz* containing a mere expression of the views of a proprietor is not an authentic record of local customs (*Uman Prosud v. Gandharp Singh*, 15 Calc., 20; L. R., 14 I. A., 127). A book of local history should not be used to prove a local custom without calling the attention of the parties to it and hearing them with regard to it (*Vallabha v. Madusudanan*, 12 Mad., 495). Until some connexion

(1) For other cases in which the evidence was held insufficient to prove a custom, see, *Tara Chand v. Rib Ram*, 3 Mad. H. C., Rep. 50, and *Mudhavray Raghavendra v. Balkrishna Raghavendra*, 4 Bom., H. C., Rep. A. C., 113.

either geographical or political, is shown to exist between the districts, there is no ground for inferring the custom of one district from its existence in another (*Hira Nuth Kuar v. Baram Narain Singh*, 17 W. R., 329. See also *Anna Purna Dasi v. Uma Charan Das*, 18 W. R., 55). The recognition by a landlord of a raiyat as tenant of a portion of a holding is not sufficient proof of the custom of the transferability of occupancy rights in that locality (*Ganesh Das v. Ram Protap Singh*, 5 C. W. N., clxxv). To prove or disprove a right or custom it is not enough to adduce evidence of a transaction in which or in the course of which the right or custom was asserted or denied. The transaction will be relevant under sec. 13, cl. (a) of the Evidence Act, if it be one by which the right or custom was asserted or denied (*Bansi Singh v. Mir Amir Ali*, 11 C. W. N., 703).

Usage.—No definition of usage is given in the Act. In speaking of "mercantile usage," their Lordships of the Privy Council in the case of *Juga Mohan Ghosh v. Manik Chand*, (7 Moo., I. A., 282 : 4 W. R. P. C., 8) have said :—"To support such a ground there needs not be either the antiquity, the uniformity or the notoriety of custom which in respect of all these becomes a local law. The usage may still be in course of growth ; it may require evidence for its support in each case ; but in the result it is enough, if it appear to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract." On the subject of "family usage," in *Raj Krishna Singh v. Ramjai Sarmah*, (19 W. R., 8 : 1 Calc., 186), it has been said :—"It is of the essence of family usages that they should be certain, invariable and continuous, and well established. Discontinuance must be held to destroy them. This would be so when the discontinuance has arisen from accidental causes ; and the effect cannot be less, when it has been intentionally brought about by the concurrent will of the family." The subject of local usage has been considered in the case of *Palakdhari Rai v. Manners*, (23 Calc., 179). In this case, the defendants alleged that certain occupancy holdings were transferable by "the law and custom prevailing in Behar." Prinsep and Ghosh, JJ., who decided this case, pointed out that under sec. 183, illustration (1), a transfer in accordance with usage was valid even without the consent of the landlord. After quoting the passage from the Privy Council case of *Juga Mohan Ghosh v. Manik Chand*, above cited, they said :—"In applying this case, it must be borne in mind that it relates to a usage in dealing in a particular class of mercantile transactions and contracts made in the course of such business. Consequently, in introducing these principles in the present case, which does not relate to contracts entered into between the parties to the litigation but affects a third party, the landlord, it would be necessary either to prove the

existence of the usage on his estate or that it is so prevalent in the neighbourhood that it can reasonably be presumed to exist on that estate. It may be that the usage may have gradually sprung up all round an estate, and yet never have been introduced on it, or been recognised on it, and therefore, in considering the evidence, it is of much importance that this should be taken into consideration in connection with the conduct of the landlord in regard to any such transfers as may have taken place without his consent."

The word 'usage' in this section would include what people are now or recently in the habit of doing in a particular place. It may be that this particular habit is only of very recent origin, or it may be one which has existed for a long time. If it be one ordinarily or regularly practised by the inhabitants of the place where the tenure exists, there would be usage within the meaning of the section (*Dalgleish v. Guzaffur Hossain*, 23 Calc., 427). In the same case in appeal after remand, it was pointed out (1) that it is not necessary that a long period of time should elapse for the growth of a "usage" or "local usage"; (2) that a "usage" may be established in a much less period of time than a "custom"; and (3) that a usage may have sprung up since the passing of the Act, and that what is necessary to establish a "local usage" of the transferability of occupancy holdings is evidence of purchases or transfers by persons other than the landlords made with the knowledge but without the consent of the landlords, and to which no objection was made by them (*Dalgleish v. Guzaffur Hossain*, 3 C. W. N., 21).

The transfer of occupancy holdings cannot be justified by local usage which is growing up. The usage should have fructuated into maturity. To establish a usage as to the transferability of occupancy holdings in a locality it is not enough to prove that several cases of transfers of such holdings have taken place. It is necessary to prove that such transfers have been made with the knowledge and without the consent of the landlord and that no successful objection to such transfer has been made by the landlord (*Ramhuri Singh v. Jabar Ali*, 6 C. W. N., 861). See also *Jagan Prasud v. Posan Sahu*, (8 C. W. N., 172).

Where the question was whether an occupancy holding was transferable or not, the lower appellate Court found as follows: "There is abundant evidence on the record to show that such lands are actually sold in the locality, and the *kabulas* filed in this case support that fact:" held, that this did not amount to a finding of local usage (*Dino Nath Ghosh v. Nabin Chandra Ghosh*, 6 C. W. N., 181.)

The finding that tenants do transfer their rights of occupancy without the landlord's consent does not in itself establish a usage in this respect so as to affect the landlord's right to accept or refuse to consent to such transfer. The finding that payment of a *nazar* is requisite implies that

the landlord's consent is necessary (*Radha Kishor Manikya v. Ananda Pria*, 8 C. W. N., 235. See also *Sibo Sundari Ghosh v. Raj Mohun Guho*, 8 C. W. N., 214 and *Kailas Chandra v. Hari Mohan*, 13 C. W. N., 541).

In order to establish usage it is not necessary to give proof of its existence for any length of time and the statement of persons who are in a position to know of its existence in their locality are admissible as evidence of it (*Sariatullah Sarkar v. Prannath Nandi*, 26 Cal., 184).

Growing usage.—A growing usage of transferability of occupancy holdings is of no effect against the landlord. The usage to be effective must have already grown up (*Rajendro Kisore Adhikari v. Chandra Nath Dutt*, 12 C. W. N., 878).

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively ; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Power of Court to take cognizance of question of limitation.—A lower appellate Court is empowered under s. 4 of the Limitation Act and s. 184 of this Act to take cognizance of a question of limitation though it has been raised as a defence in the Court of First Instance, if upon the proceedings in the case it is clear that the suit is barred by limitation (*Deo Narain Chaudhuri v. Webb*, 28 Calc., 86). And it is obligatory on the Court to dismiss the suit in such a case, (*Abdulla v. Asraf Ali*, 7 C. L. J., 152).

Limitation in suits, appeals and applications specified in Schedule III.—For an instance of arrears of the rent of a *putni taluk* being held barred under the provisions of this section and Schedule III, art 2 (b), see *Barnomayi Dasi v. Barnomayi Chaudhurani*, (23 Calc., 191). There is no saving clause in this section for suits in which the cause of action had arisen before the passing of this Act (*Ramdhan Bhadra v. Ram Kumar Dey*, 17 Calc., 926). Art. 2 of Schedule III of the Bengal Tenancy Act prescribes one period of limitation for all suits for arrears of rent brought under its provisions. It includes a suit for arrears payable under a lease and there is no distinction as to the form

of the lease, or whether it is registered or not (*Iswari Prasad Narain Sahi v. Crowdy*, 17 Calc., 469; *Mackenzie v. Mahomed Ali Khan*, 19 Calc., 1).

Limitation in suits, appeals and applications not specified in Schedule III.—The periods of limitation prescribed in Act XV of 1877 are applicable to suits, appeals and applications not specified in Schedule III of this Act. See *Golap Chandra Naulukha v. Krishna Chandra Das Biswas*, (5 Calc., 314).

Portions of the Indian Limitation Act not applicable to such suits, &c.

XV of 1877.

IX of 1908.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act, 1877, (secs. 6, 7, 8, 9, of Act IX of 1908) shall not apply to the suits and application mentioned in the last foregoing section.

(2) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1877, (1908) shall apply to all suits, appeals and applications mentioned in the last foregoing section.

XV of 1877.

IX of 1908.

Provisions of Limitation Act inapplicable to suits, appeals and applications specified in Schedule III.—Section 7 (Sec. 6) of the Limitation Act is to the effect that if a person entitled to sue or make an application is a minor, or insane, or an idiot, he may sue or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed by the law. This was also held to be the case in a suit for arrears under Act VIII of 1869, B. C., (*Girija Nath Rai v. Patani Bibi*, 17 Calc., 263). Section 8 (Sec 7) of the Limitation Act provides that when one of several joint creditors or claimants is under any such disability, and a discharge can be given without his concurrence, time will run against them all; but where no such discharge can be given, time will not run against any of them, until one of them becomes capable of giving such discharge without the concurrence of the others. Under the provisions of section 9, when once time has begun to run, no subsequent disability or inability to sue stops it. But it is only to the suits, appeals and applications specified in Schedule III that these sections of the Limitation Act are inapplicable. To other suits, appeals and applications brought or made under the Bengal Tenancy Act these provisions of the Limitation Act are fully applicable. In a case where limitation is determined by the provisions of s. 167 of the Act, s. 7 (Sec. 6) of the Limitation Act has no

application and a minor is not entitled to any fresh period of limitation (*Akshai Kumar Sur v. Bijai Chnd*, 29 Calc., 813).

Sub-Section (2).—This sub-section makes it clear that the provisions of section 5 (secs. 4 and 5 of Act IX of 1908) of the Limitation Act, as well as the rules laid down in Part III of the Act for the computation of the period of limitation, are to be applied in computing the special periods of limitation specified in Schedule III of this Act. (See *Bihari Lal Mukhurji v. Mangala Nath Mukhurji*, 5 Calc., 110; *Golap Chandra Naulakha v. Krishna Chandra Das Biswas*, 5 Calc., 314; *Kush Lal Mah-tan v. Ganesh Dutta*, 7 Calc., 690; *Khettra Mohan Chakravartti v. Dinabashi Shaha*, 10 Calc., 265. Compare *Nagendra Nath Mallik v. Mathur Mohan Parhi*, 18 Calc., 368). This sub-section makes the provisions of sec. 19 of the Limitation Act applicable to the execution of rent decrees. The acknowledgment under s. 19 does not affect or alter the period of limitation prescribed in art. 6, Sched., III of this Act, but only gives the decree-holder a fresh starting point for counting the period prescribed by the article (*Harihar Lal v. Ganendra Prasad*, 1 C. L. J., 61 n.)

Limitation in cases in which litigation has prevented institution of suit.—The Rent Law Commission (see para 162, p. 72, of their Report), proposed to introduce a section to the effect that “when the result of the litigation between any persons is such that they are found to stand in the relation of landlord and tenant to each other, and to have stood in this relation while such litigation was pending, but until their mutual rights were finally determined by such litigation such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation.” They explained that this proposed rule was founded on the case of *Swarnamayi v. Sashi Mukhi Barmani*, (12 Moo. I. A., 244 : 11 W. R., P. C., 5 : 2 B. L. R., P. C., 10). In this case, “a *samindar* brought a *patni* tenure to sale under Reg. VIII of 1819. The *patnidar* was, thereupon, ousted, and the purchaser took possession of the *patni* tenure. The *patnidar* then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the *patni* tenure, together with mesne profits, from the purchaser for the period of his possession. The *samindar* subsequently sued the *patnidar* for rent for this period. Such rent was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held, that it was not barred ; that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived ; that the *patnidar*, on being restored to possession, took back the estate subject to the obligation to pay the rent ; and that the particular arrears must be taken to have become

due in the year in which that restoration to possession took place." This case was followed in *Ishan Chandra Rai v. Ashanullah*, (8 B. L. R., 537, note : 16 W. R., 79) ; *Din Dayal Paramanik v. Radha Kishori Debi*, (8 B. L. R., 536 : 17 W. R., 415) ; *Mohesh Chandra Chakladar v. Gangamani Dasi*, (18 W. R., 59) and *Dhanpat Singh v. Suraswati Misra*, (19 Calc., 267). The Rent Commission pointed out that in the case of *Swarnamoyi v. Sashi Mukhi Barmani*, "there are two points to be noticed : (1) the *zamindar* could not sue the *patnidar* for the rent as long as the latter was out of possession ; (2) the *patnidar* received mesne profits for the period for which rent was claimed." From this case, it was said, where distinguishable "some subsequent cases, in which, although the landlord had denied the continuance of the relation of landlord and tenant, and attempted to put an end to such relation, the tenant was, nevertheless, not dispossessed and there was in consequence nothing to prevent the landlord from recovering his rent. In these cases, although one element, receipt by the tenant of the profit of the land, was present, the other element, *viz.*, inability of the landlord to sue, was wanting." (See *Watson & Co. v. Dhanendra Chandra Mukhurji*, 3 Calc., 6 ; *Brajendra Kumar Rai v. Rakhal Chandra Rai*, *ib.*, 791 ; *Haro Prasad Rai v. Gopal Das Dutta*, *ib.*, 817 ; *Haronath Rai v. Golak Nath*, 19 W. R., 18 ; *Barada Kunt Rai v. Chandra Kumar Rai*, 23 W. R., 280 ; *Haro Prasad Rai v. Gopal Das Dutta*, 9 Calc., 255 : 12 C. L. R., 129 ; *Sherriff v. Dinonath Mukurji*, 12 Calc., 258 ; *Haro Kumar Ghosh v. Kali Krishna Thakur*, 17 Calc., 251 ; *Barnomayi Dasi v. Bramamayi Chaudhrani*, 23 Calc., 191 ; *Mahomed Mazid v. Mahomed Ashan*, 23 Calc., 205). Where a suit for the recovery of arrears of rent was brought more than three years after the due date ; *held*, that the fact that a suit for enhancement had been brought by the plaintiff within that period and in that suit the plaintiff had claimed enhanced rent for the year in question, stayed the operation of the law of limitation (*Hem Chandra Chaudhuri v. Kali Prasanna Bhaduri*, 8 C. W. N., 1).

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

Penalties.
Penalties for illegal interference with produce.

(a) distrains, or attempts to distrain the produce of a tenant's holding, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or,

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the
XLV of 1860. Indian Penal Code.

(2) Any person who abets within the meaning of the Indian Penal Code the doing
XLV of 1860. of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Criminal trespass is defined in sec. 441, and its punishment is prescribed in sec. 447, of the Indian Penal Code. Abetment is dealt with in Chap. V, secs. 107 to 117 of the same Code.

[Damages for denial of landlord's title.]

186A. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under subsection (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, subject to the provisions of section 158B, in any of the modes in which a decree for rent may be executed.]

This section was introduced into the Act by s. 57, Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

Under the former rent law, s. 111 of the Transfer of Property Act, and the English law, denial of a landlord's title is a ground of forfeiture of the tenant's interest. It is not a ground of forfeiture under the present Act (see notes, pp. 113 and 287). The committee who framed the draft Bill of 1906 considered that forfeiture of the tenant's interest would be too severe a penalty for such an offence. They accordingly framed the present section as a substitute for it. In the Notes on Clauses of the Bill of 1906, it was said :

“ One of the main objects of the Bill is to give landlords greater facilities for collecting their rents. It is to a great extent owing to *mala fide* denials of the landlord's title that ordinary rent-suits have in so many cases become complicated and protracted title suits. The proposed new section will doubtlessly be very effectual in preventing tenants from attempting to evade payment by the setting up of false titles.”

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, *Agents and representatives of landlords.* before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, *Power for landlord to act through agent.* unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

The written authority referred to in sub-section (1) must be stamped as a power of attorney under art. 48, Sch. I, Act II of 1899. See note to sec. 145. Under sub-section (3) a receipt for rent may be signed by an agent of the landlord : see note to sec. 56.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them. *Joint-landlords to act collectively or by common agent.*

Powers of co-sharer landlords under former law.—Under the former law, one co-sharer landlord could not sue a tenant for a

kaibulyat (*Ghani Mahomed v. Moran*, 4 Calc., 96 : 2 C. L. R., 370 ; *Sarat Sundari Debi v. Watson*, 2 B. L. R., A. C., 159 : 11 W. R., 25 ; *Uday Charn Dhar v. Kali Tara Dasi*, 2 B. L. R., App., 52 ; 11 W. R., 392 ; *Indra Chandra Dugar v. Brindaban Bihara*, 8 B. L. R., 251 ; *contra*, *Ramanath Rakhit v. Chund Hari Bhuiya*, 6 B. L. R., 356 : 14 W. R., 432). He could collect his share of the rent separately only if the tenant had agreed to pay him his proportionate share of the entire rent. Such an agreement might be evidenced either by direct proof or by usage from which its existence might be presumed, and was perfectly consistent with the continuance of the original lease of the entire tenure, —the cancellation and determination of which was not to be presumed from the mere fact of a separate payment of rent to one or more of the co-sharers (*Ghani Mahomed v. Moran*, 4 Calc., 96 : 2 C. L. R., 370 ; *Ranjai Singh v. Nagar Ghazi*, 5 W. R., Act X, 68 ; *Ganga Narain Das v. Saradu Mohan Rai*, 12 W. R., 30 : 3 B. L. R., A. C., 230 ; *Sri Misra v. Crowdy*, 15 W. R., 243 ; *Indramani Barmani v. Surup Chandra Pal*, 15 W. R., 395 : 12 B. L. R., 291, note ; *Bhairab Mandal v. Gangaram Banurji*, 17 W. R., 408 ; *Huradhan Gossami v. Ram Nawaz Misra*, 17 W. R., 414 ; *Dinobandhu Chaudhri v. Dinonath Mukhurji*, 19 W. R., 168 ; *Lalin v. Hemraj Singh*, 20 W. R., 76 ; *Baikanto Kaibarta v. Sashi Mohan Pal*, 22 W. R., 526 ; *Braro Kishor Bhattacharji v. Uma Sundari Debi*, 23 W. R., 37 ; *Dinobandhu Rai v. Uma Charan Choudhri*, 32 W. R., 53 ; *Anu Mandal v. Kamaludin*, 1 C. L. R., 248 ; *Ahamuddin v. Girish Chandra Shamanto*, 4 Calc., 350 ; *Lutfulhak v. Gopichandra Mazumdar*, 5 Calc., 941. But see *contra*, *Amrit Chaudhri v. Haidar Ali*, W. R., Sp. No., Act X, 63 ; *Mahomed Singh v. Maghi Chaudhurain*, 1 W. R., 253 ; *Phari Mohan Singh v. Mirza Ghazi Mozumdar*, 11 W. R., 270 : 2 B. L. R., 337 ; *Dinobandhu Rai v. Uma Charan Chaudhri*, 23 W. R., 53). But a co-sharer landlord could sue for his share of the rent separately if he made all his co-sharer parties defendant to it (*Harkishor Das v. Jugal Kishor Shaha*, 16 W. R., 281 ; *Salehunnessa Khatun v. Mohesh Chandra Rai*, 17 W. R., 452 ; *Durga Charan Sarmah v. Jampa Dasi*, 21 W. R., 46 : 12 B. L. R., 289 ; *Mokhada Sundari Dasi v. Karim*, 23 W. R., 11 ; *Kali Charan Singh v. Solano*, 24 W. R., 267 ; *Srinath Chandra Choudhri v. Mohesh Chandra Bandopadhyaya*, 1 C. L. R., 453 ; *Jadu Das v. Sutherland*, 4 Calc., 556 : 3 C. L. R., 223 ; *Ganga Narain Sarkar v. Srinath Banurji*, 5 Calc., 915 ; *Abhai Govind Chaudhri v. Hari Charan Chaudhri*, 8 Calc., 277 ; *contra* *Annoda Charan Rai v. Kali Kumar Rai*, 4 Calc., 89 ; *Manohar Das v. Manzur Ali*, 5 All., 40). He was not bound to ask his co-sharers to join him as plaintiff (*Turini Kant Lahiri v. Nanda Kishor Patranavis*, 12 C. L. R., 588). He might also claim the whole rent and ask the Court to make the other co-sharers plaintiffs with him (*Tara Chand*

Banurji v. Amir Mandal, 22 W. R., 394). In a subsequent case it was laid down that this was the proper course for him to pursue in such circumstances (*Jadu Shat v. Kadambini Dasi*, 7 Calc., 150).⁽¹⁾ One co-sharer landlord could not enhance the rent of his share, such an enhancement being inconsistent with the continuance of the lease of the entire tenure (*Ghani Mahomed v. Moran*, 4 Calc., 96 : 2 C. L. R., 370 ; see also *Bhairab Mandal v. Gangaram Banurji*, 17 W. R., 408 : 12 B. L. R., 290, note ; *Haradhan Gossami v. Ram Nawaz Misra*, 17 W. R., 414 ; *Raj Chandra Mazumdar v. Rajaram Gop*, 22 W. R., 385 ; *Chuni Singh v. Hari Mahata*, 9 C. L. R., 37 : 7 Calc., 633 ; *Kashi Kishor Rai v. Alip Mandal*, 6 Calc., 149 ; *Jogendra Chandra Ghosh v. Nobin Chundra Chattopadhyaya*, 8 Calc., 353 : 10 C. L. R., 331 ; *Kali Chandra Singh v. Raj Kishor Bhadro*, 11 Calc., 615 ; but see *contra*, *Dukhi Ram Sarkar v. Gauhar Mandal*, 10 W. R., 307 ; *Sarat Sundari Debi v. Ananda Mohun Ghatak*, 5 Calc., 273 : 4 C. L. R., 448 ; *Bidhu Bhushan Basu v. Kamaradin Mandal*, 9 Calc., 864 ; *Rash Bihari Mukherji v. Sakhi Sundari Dasi*, 11 Calc., 644). He could not do so, even if he made all his co-sharers parties to the suit (*Bharat Chandra Rai v. Kali Das De*, 5 Calc., 574 : 5 C. L. R., 545. See *contra*, *Gopal v. Macnaghten*, 7 Calc., 751). But he could issue a notice of enhancement provided the suit was brought by all the share-holders (*Chuni Singh v. Hira Mahata*, 7 Calc., 633 ; *Bidhu Bhushan Basu v. Kamaradin Mandal*, 9 Calc., 864). When a tenant had been admitted into possession by all the co-partners in an estate, he could not be ejected unless all the partners joined in the action (*Gauri Sankar Sarman v. Tirthamani*, 12 W. R., 452 ; *Bissessar Karmakar v. Jaggabandhu Karmakar*, 14 W. R., 183 ; *Alam Manjhi v. Ashad Ali*, 16 W. R., 138 ; *Haladhar Sen v. Guru Das Rai*, 20 W. R., 126 ; *Radha Prasad Wasti v. Isaf*, 7 Calc., 414 : 9 C. L. R., 76 ; *Tulsi Pandi v. Bachu Lal*, 12-C. L. R., 223 ; *Bollai Sati v. Akram Ali*, 4 Calc., 961 ; *Reasat Hossein v. Chorwar Singh* 7 Calc., 470). And in one case it was held that if a single co-sharer had granted a lease of land separately enjoyed by him, an auction-purchaser under Act XI of 1859 could not eject the tenant, as the lease by the single co-sharer was to be looked upon as the act of all (*Manohar Mukherji v. Jai Krishna Mukherji*, 6 W. R., 315), and in another, that one of several joint lessors could eject a lessee on the expiry of lease (*Modan Singh v. Narpat Singh*, 2 W. R., 290). When several co-sharers had served a joint notice to quit, and they had jointly instituted a suit for the recovery of the land, the fact of one of the plaintiffs withdrawing from the suit did not prevent the remaining plaintiffs from obtaining a decree for possession of their

(1) As to the High Court's power of interference with an order of the Court refusing to add another party to the suit, see *Jagudamba Dasi v. Haran Chandra Dutta*, 10 W. R., 109.

shares (*Dwarka Nuth Rai v. Kali Chandra Rai*, 13 Calc., 75). Where land is held in joint proprietorship, an action to recover it from a stranger must be brought in the names of all the proprietors jointly (*Nandan Lal v. Lloyd*, 22 W. R., 74). But no man has a right to intrude upon *ijmali* property against the will of the co-sharers or of any of them. If he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if only some of the co-sharers wish to eject him : and the legal means by which such partial ejectment is effected is by giving the plaintiffs possession of their shares jointly with the intruder (*Rudha Prasad Wasti v. Isaf*, 7 Calc., 414 : 9 C. L. R., 76. See also *Ghansham Singh v. Ranjit Singh*, 4 W. R., Act X, 39, and *contra*, *Luchman Sahai v. Siumi Jha*, 5 W. R., Act X, 93). One shareholder in a joint undivided estate could not apply under sec. 10, Act VI, B. C., of 1862 for the measurement of land (*Muluk Chand Mandal v. Madhushudan Bachaspati*, 16 W. R., 126 ; *Surendra Mohan Rai v. Bhagabat Charan Gangopadhyaya*, 18 W. R., 332 : 10 B. L. R., 403 note) ; nor could he do so under sec. 37, Act VIII, B. C., 1862 (*Santiram Panjah v. Baikant Paria*, 19 W. R., 280 : 10 B. L. R., 397 ; *Piari Mohan Mukherji v. Raj Krishna Mukherji*, 20 W. R., 385). But he could do so, under sec. 38, Act VIII, B. C., of 1869, after making the remaining proprietors parties to the proceedings (*Abdul Hossein v. Lal Chand Mahitun*, 10 Calc., 36 : 13 C. L. R., 323). See note, p. 290. Finally, a co-sharer landlord could not exercise the power of distraint except through a manager authorised to collect the rents on behalf of all the sharers (sec. 112, Act X of 1859, and sec. 68, Act VIII B. C., of 1869).

Meaning of "landlord" and "joint landlord" in this section.—The word "landlord" must be taken to mean the whole body of landlords (*Jugabandhu Patak v. Jadu Ghosh Alkushi*, 15 Calc., 47). The term "joint landlords" must be held to include all the co-sharers immediately under whom the tenant holds, whether such co-sharers receive their *quota* of rent from the tenant jointly or separately (*Haladhur Saha v. Rhidui Sundari*, 19 Calc., 593). When a tenure was held under a *zamindari* forming an entire estate, which was subsequently partitioned into four, it was held that the effect of the partition was to create separate and distinct tenures under the proprietors of the four new estates, and that the proprietors of the several estates were not joint landlords (*Hem Chandra Chaudhri v. Kali Prasanna Bhaduri*, 26 Calc., 832). Where a tenant agreed with his landlord, a *dar-mukararidar*, to pay rent both to him and the *mukwaridar*, held that they were not joint landlords, and even if they were, by collecting rent and suing separately, they had ceased to be so (*Matangini Dasi v. Ram Das Mallik*, 7 C. W. N., 93). When a tenant has contracted to pay rent to one of several landlords in respect of his share separately

from that of his co-sharers, and such rent has been assessed without reference to the rent payable to the other co-sharers and has been separately collected, the landlord is a separate landlord (*Bhabatarini Dasi v. Ekabbar Malita*, 5 C. L. J., 235). A *kabulyat* by which a tenant agrees to pay rent at a specified rate to a co-sharer landlord for his undivided half share of the lands held by the tenant under the whole body of landlords and further to pay additional rent at a fixed rate for additional area found on measurement to be held by him under such co-sharer creates a separate tenancy, and is not merely an agreement to pay the share of the rent separately (*Sailendra Nath Mitra v. Karali Charan Singh*, 2 C. L. J., 534). Section 188 does not prohibit joint landlords from ceasing to be joint or preclude them from suing for their shares of the rent separately, when they have ceased or wish to cease, to be joint landlords: provided the suits are so framed as to free the tenant from all further liability to any one of them (*Rajnarain Mitra v. Ekadasi Bag*, 27 Calc., 479 : 4 C. W. N., 494).

Required or authorised.—Filing of a suit is not a thing which the landlord is, under the Bengal Tenancy Act, authorised or required to do. Section 188 is no bar to a sharer suing for the whole rent making the co-sharers who refuse to join as plaintiffs, defendants in the case. The right to bring the tenure to sale for arrears of rent remains intact. c. f., Section 188A (*Raja Pramada Nath Roy v. Raja Ramani Kanta Roy* 35 Calc., 331 : 12 C. W. N., 249 : 7 C. L. J., 139 P. C., followed in 7 C. L. J., 425).

Meaning of "authorized."—All that this section requires is that the agent should be authorized, and such authority may be given either verbally or in writing (*Gopinath Chakravarti v. Umakanth Das Rai*, 24 Calc., 169).

Powers of joint landlords under this Act.—Under the provisions of this Act joint landlords cannot enhance (ss. 6, 33, 43 and 48), the rent of their tenants except jointly or by an agent authorized to act on behalf of all of them (*Gopal Chandra Das v. Umesh Narain Chaudhuri*, 17 Calc., 695 ; *Mahib Ali v. Amir Rai*, 17 Calc., 540 ; *Haladhar Saha v. Rhidai Sundari*, 19 Calc., 593 ; *Baidya Nath De Sarkar v. Ilim*, 2 C. W. N., 44 : 25 Calc., 917). But contracts for enhanced rent executed before the passing of this Act do not come within the operation of this section (*Tejenidra Narain Singh v. Bakai Singh*, 22 Calc., 658). Co-sharer landlords who are joint landlords cannot now sue separately for additional rent for additional land found by measurement to be in a tenant's possession (sec. 52 (a) ; *Gopal Chandra Das v. Umesh Narain Chaudhuri*, 17 Calc., 695 ; *Bindu Bashini Dasi v. Ptari Mohan Basu*, 20 Calc., 107). But where the tenant has agreed to allow

one of several co-sharer landlords to deal with him as his own tenant, without reference to the rights of the other co-sharer landlords, the effect is to create a separate tenancy under such fractional co-sharer and the provisions of section 188 are inapplicable (*Panchanan Banurji v. Raj Kumar Guha*, 19 Calc., 610; *Govinda Chondra Pal v. Hamidulla Bhuian* 7 C. W. N., 670). Compare on this point *Baidya Nath De Sarkar v. Ilim*, (2 C. W. N., 44: 25 Calc., 917). So too, when a tenant executed a *kabulyat* agreeing to pay rent for a certain area at a certain rate, and further agreeing to pay rent at the same rate for an additional area on its becoming fit for cultivation, it was held that a suit brought on the *kabulyat* by the co-sharer landlord in whose favour it had been executed, would lie. It was said that the suit was not one for enhancement or one for additional rent for excess land, and if the plaintiff was entitled, as he admittedly was, to realize his share of the rent separately, there was no reason why he should not be entitled to claim separately the rent that was payable, not upon a fresh adjustment of the rent inconsistent with a continuance of the old tenancy, but upon an ascertainment of the rent payable in accordance with the terms of the original letting (*Ram Chandra Chakravarti v. Giridhar Dutta*, 19 Calc., 755). This was followed in *Tejendra Narayan Singh v. Bakai Singh*, (22 Calc., 658); and *Din Tarini Dasi v. Broughton*, (3 C. W. N., 225). But this is not the case when the rent has to be ascertained and adjusted after measurement (*Baidya Nath De Sarkar v. Ilim*, 2 C. W. N., 44: Calc., 917). So, when the defendants took possession of certain lands by gradual encroachment, and the plaintiffs, being co-sharer landlords, sued for assessment of rent, it was held that the holding would be a new holding and the rent assessed a new rent, sec. 52 would not apply and sec. 188 would be no bar to the suit. But if a co-sharer landlord sues for rent not merely of the additional land found in possession of the tenant, but in respect of the entire quantity of land found in his possession including the lands of his old holding, sec. 52 applies and sec. 188 bars the suit (*Abdul Hamid v. Mohini Kant Saha*, 4 C. W. N., 508). A fractional share-holder cannot grant abatement of the rent of a holding independently of his other co-sharers (sec. 52 (b); *Syama Charan Mandal v. Saim Mollah*, 1 C. W. N., 415; *Bhupendra Narain Datta v. Raman Krishna Datta*, 27 Calc., 417: 4 C. W. N., 107). A co-sharer landlord who is one of several joint landlords cannot now eject a tenant (secs. 10, 18, 25 and 49), from a tenancy created by all the co-sharers unless it has been determined by all of them (*Ghulam Mohiuddin v. Khairan*, 8 C. W. N., 325: 31 Calc., 786). But a co-sharer landlord who is the managing member of a joint Hindu family may eject (*Annoda Mohan Sarma v. Basir*, S. A. 1568 of 1886, decided 15th Jan., 1887), and this section does not apply when the suit is brought under the contract law

on a breach of the conditions of a lease by the tenant (*Haripria Debi v. Ram Chandra Mahanti*, 19 Calc., 541), nor when separate leases have been executed in favour of each co-sharer, stipulating for the separate payment of each co-sharer's share of the rent, giving each co-sharer a right to measure and assess the land independently of the others and thus constituting three separate tenancies, one of which might be avoided without affecting the others (*Harendra Narain Singh v. Moran*, 15 Calc., 40). A co-sharer landlord can take joint possession of an abandoned non-transferable holding without bringing a suit for partition (*Dilbar Sardar v. Hossein Ali*, 26 Calc., 553).

A co-sharer who is a joint landlord cannot now apply for commutation of a rent payable in kind (section 40), or for a division and appraisement of rent payable in kind (section 69); (*Nukheda Singh v. Ripu Mardan Singh*, 4 C. W. N., 239), or for the registration of landlords improvements (section 80), or sub-let (section 85), or issue a notice and enter upon an abandoned holding (section 87), or measure lands (section 90); (*Mahib Ali v. Amir Rai*, 17 Calc., 540; *Matangini Dasi v. Ram Das Mullik*, 7 C. W. N., 93, in which case the landlords were not joint landlords), or apply for a survey and record-of-rights (section 101 (2) (a), or for a settlement of fair rents [section 105 (1) and (2)], or distrain (section 121), or apply to have the incidents of a tenancy determined (section 158, and *Mahib Ali v. Amir Rai*, 17 Calc., 538), or apply for the attachment and sale of a tenure or holding so that the tenure or holding may pass at the sale (section 162); (*Bhabu Nath Rai v. Durga Prasanno Ghosh*, 16 Calc., 326; *Beni Mudhab Rai v. Jaod Ali Sirkar*, 17 Calc., 390 (1); *Durga Charan Mandal v. Kali Prasanna Sarkar*, 26 Calc., 727; 3 C. W. N., 586; *Sadugar Sarkar v. Krishna Chandra Nath*, 26 Calc., 937; 3 C. W. N., 742; *Jarip v. Ram Kumar De*, 3 C. W. N., 747; *Narain Uddin v. Srimanta Ghosh*, 29 Calc., 219; 6 C. W. N., 124; *Umesh Chandra Rai v. Gour Lal Chaudhri*, 10 C. W. N., 1042 (2), or apply to have declared that land has ceased to be *chur* or *diara* land [section 180 (3)]. But he may institute proceedings under section 106, disputing an entry in a record-of-rights (*Sher Bahadur Shahu v. Mackenzie*, 7 C. W. N., 400). A co-sharer landlord may sue to compel a tenant to fill up a tank which he has excavated in one part of his holding (*Govinda Chandra Basu v. Kamizuddin*, 9 C. W. N., ccxvi). If however one set of landlords obtains separate *Kabulyats* entering into separate contracts for rent with the tenants such landlords cease to be joint owners, and are entitled to make an application for

(1) But see *Nitaye Behari Sahu v. Hari Govinda Saha*, 26 Calc., 677.

(2) The law on this point is changed in Bengal by Act I, B. C., of 1907. See ss. 148A, 149, 150 and 151A.

measurement under Section 91 (*Jognesh Prokas Ganguli v. Moniraddi*, 35 Calc., 417).

Application of this section to suits for arrears of rent.— It has been held that this section does not apply to a suit brought by a co-sharer landlord for his share of the rent, if he has previously collected it separately (*Dinamayi Debi v. Satimullah*, decided on the 14th Sept., 1886, reference under section 617 of Act X of 1877 from the District Judge of Kungpore, dated 18th June, 1886 ; *Jagabandhu Patak v. Jadu Ghosh Alkushi* 15 Calc., 47 ; *Raj Kumar Mazumdar v. Prabal Chandra Ganguli*, 9 C. W. N., 656) ; or if the tenant has taken a lease from him in respect of his share of the holding (*Bihari Charan Sen v. Bhut Nath Paramanik*, 3 C. W. N., 214) ; or to a suit by a co-sharer landlord for the entire rent, after making the other co-sharers, who will not join in the suit, parties defendant (*Prem Chand Naskar v. Mukhoda Debi*, 14 Calc., 201, and *Umesh Chandra Rai v. Nasir Mullik*, 14 Calc., 203, note). But a suit by a co-sharer landlord for his proportionate share of the rent cannot be maintained, when there is no contract under which the tenant is bound to pay his share separately, although the other co-sharer landlords are made defendants (*Ram Saran v. Nem Nagain*, 6 C. W. N., 326). When a landlord sues for the entire rent of a holding, but it is found that he is entitled only to a share of the rent, the suit must be dismissed, unless his co-sharers are made parties to it or an arrangement is proved between the landlords and the tenant, that the latter should pay each landlord his proportionate share of the entire rent (*Nepal Chandra Ghosh v. Mohendra Nath Rai*, 31 Calc., 707). When a decree for the entire rent of a tenure is obtained by one of several co-sharers by making the others parties defendant and is executed by him alone, the decree has the same effect as if obtained by all the co-sharers, and section 188 has no application (*Chandra Sikhar Patra v. Rani Manjhi*, 3 C. W. N., 385). It is only when plaintiffs can show that those entitled as co-sharers to join with them refused to join, or have otherwise acted prejudicially to their interests, that they are entitled to sue alone and make their co-sharers defendants in the suit (*Dwarkanath Mittra v. Tara Prasanno Rai*, 17 Calc., 160 ; *Jibanti Nath Khan v. Gokul Chandra Chaudhuri*, 19 Calc., 760 ; *Sashi Sikharesswar Rai v. Giris Chandra Lahiri*, 1 C. W. N., 659). But such a suit should not be dismissed merely on the ground that there is no evidence to show that the other co-sharers refused to join as plaintiffs (*Bissessar Rai Chaudhuri v. Braja Kant Rai*, 1 C. W. N., 221). If co-sharers are unaware whether the share of the rent due to their other co-sharers has been paid or not, they are entitled to bring their suit in the alternative, asking for their share of the rent only in the first instance, but praying that, if any portion of the rent due to their co-sharers be unpaid, they

may be allowed to amend their plaint and claim a decree for the entire rent (*Prakash Lal v. Ekkauri Balgobind Sahai*, 19 Calc., 735). See section 148A. In *Piari Mohan Basu v. Nobin Chandra Rai*, (26 Calc., 409 ; 3 C. W. N., 271) as the Court was of opinion that there was a conflict between the cases of *Turini Kant Lahiri v. Nanda Kishor Patronavis*, (12 C. L. R., 588), *Dwarkanath Mittra v. Tara Prasanna Rai* (17 Calc., 160), *Bissessar Rai Chaudhuri v. Braja Kanta Rai*, (1 C. W. N., 221) and *Sashi Shikareswar Rai v. Grish Chandra Lahiri*, (1 C. W. N., 659) it referred the following question for the decision of a Full Bench : "When two parties contract with a third party, can a suit by one of them, making the other a co-defendant be dismissed, because the plaintiff had not proved that the co-defendant had refused to join as plaintiff?" The Full Bench answered this question in the negative. When a number of landlords collect rent jointly, the fact that one of them alone has got his name registered under the Land Registration Act in respect of his share does not entitle him to recover his share of the rent separately, (*Rampad Singh v. Ramdas Pandi*, 1. C. W. N., ccxlv).

Where a whole body of co-sharer landlords and tenants have come to an arrangement by which rent is made payable to the co-sharers separately in proportion to their shares in the estate, it is not competent for one of the co-sharers so long as such arrangement subsists, to bring a suit for the full rents of the tenure by making his co-sharers parties defendants (*Promoda Nath Rai v. Ramani Kant Rai*, 9 C. W. N., 34). But there is nothing to prevent the co-sharers reverting to their original condition, if they are all agreed (*Shama Charan Bhattacharya v. Akhai Kumar Mitra*, 10 C. W. N., 787 : 3 C. L. J., 627,) or where there is nothing to show that their former arrangement to collect the rent separately was to be perpetual (*Akhai Kumar Mitra v. Gopal Kamini Debi*, 33 Calc. 1010 : 10 C. W. N., 952.)

Where several co-sharer landlords, who had been collecting the rent due to them separately from the *dar-maurusidars*, united in bringing an action against the intermediate *maurusidars* for arrears of rent, so as to obtain a decree which would be binding upon and would pass the tenure ; *held*, that the landlords were not bound to continue to collect rent in this manner unless they had given their consent in writing under sec. 88, and that their action in bringing a joint suit did not amount to fraud (*Girish Chandra Mukhurji v. Chhatradhar Ghosh*, 3 C. L. J., 379).

But see the changes introduced by ss. 148A, 158B, the proviso to s. 169, and s. 188A, added to the Act by Act I, B. C., of 1907 and Act I, E. B. C., of 1908.

Suits for damages by co-sharer landlords.—A suit for damages for trees cut down by a tenant is maintainable at the instance of one of

several joint landlords (*Hrisikesh Singha v. Sadhu Charan Lohar*, 2 C. W. N., 80).

High Court's powers of revision.—Orders passed illegally and with material irregularity under this section may be revised by the High Court under sec. 622, (Sec. 115) C. P. C. (*Jagabanadhu Patak v. Jadu Ghosh Alkushi*, 15 Calc., 47 ; *Hrisikesh Singha v. Sadhu Charan Lohar*, 2 C. W. N., 80).

Procedure in
suits by joint
landlords.

[188A. Notwithstanding anything contained in this Act, every suit between landlord and tenant as such instituted by—

- (a) a sole landlord,
- (b) the entire body of landlords, or,
- (c) one or more co-sharer landlords,

shall be subject to the provisions of sections 143 to 153 (both inclusive);

and to every decree passed in a suit framed under sub-section (1) or sub-section (2) of section 158B, the provisions of Chapter XIV shall, so far as may be practicable, be applicable.]

This section was introduced into the Act by s. 58, Act I, B. C., of 1907 and Act I, E. B. C., of 1908. In the Select Committee's report on the Bill of 1906, it is said with reference to this section :

“ We have recast this clause in order more fully to counteract the ruling in the case of *Jogendra Nath Ghosh v. Puban Chandra Ghosh* referred to in the note on clause 34. We have made the provisions of sections 148 to 153 applicable to all suits between landlord and tenant as such instituted by a sole landlord, the entire body of landlords or one or more co-sharer landlords, and have omitted mention of sections 168, 169, 184 and 185, and we have applied the various sections of Chapter XIV of the Act to proceedings in execution of rent decrees in suits framed under section 158B. This was apparently the intention of the framers of the Bengal Tenancy Act, 1885, but the intention was frustrated by the *ratio decidendi* in the case of *Jogendra Nath Ghosh v. Puban Chandra Ghosh*.” (8 C. W. N., 472). See notes to 148A, 158B, 169, and Sched. III Arts (2) and (6).

Rules under Act.

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits ;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exerciseable by any officer under the Bengal Survey Act, 1875 ; and

V (B. C.) of 1875.

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil ; and

[(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act ;

(3) to prescribe the manner in which landlord's fees shall be transmitted to the landlord ; and

(4) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 and 18, clause (a), may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with.]

Sub-sections (2), (3), and (4) in brackets have been substituted for the old sub-section (2) of this section by s. 59, Act I, of B. C., of 1907 and Act I, E. B. C., of 1908.

Extended to Orissa, (Not., Jan. 5th, 1893), and to the Chota Nagpur division, except the district of Manbhum (Not., Aug. 4th, 1906).

Government Rules under this Act.—The rules made by the Local Government under this section, with the Board of Revenue's instructions thereon, are printed in Appendix I. It was held in *Upadhyaya Thakur v. Persidh Singh*, (23 Calc., 723) that rule 25 of the former Chap. VI of the Government rules under the Act which allowed any number of tenants occupying land under the same landlord to be joined as defendants in the same proceeding for the settlement of rents had been legally made by Government under clause (1) of this section. See rule 85 of the present Chap. VI.

Board of Revenue's Survey and Settlement Rules.—All rules in the Board's Survey and Settlement Manuals relating to the duties of Revenue Officers making a survey and preparing a record-of-rights under the authority of section 101 of the Bengal Tenancy Act, so far as such officers are judicial officers and purporting to be instructions to those officers, which have not been passed by Government in the manner prescribed by secs. 189 and 190, are altogether without sanction of law and are in no way binding on such officers (*Secretary of State v. Netai Singh*, 21 Calc., 38, pp. 48, 49).

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making publication and confirmation of rules.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner :

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Extended to Orissa, (Not., Jan. 5th, 1893) and to the Chota Nagpur division except the district of Manbhum (Not., Aug. 4th 1906). The present law there will be found in Act VI, B. C., of 1908, certain portions of which have been extended to Parganas Barabhum and Patkum in the district of Manbhum.

The only other authority, besides the Local Government, authorized by this Act to make rules under it is the High Court (see secs. 100, 142 and 143). The rules framed by the High Court under secs. 100 and 142 will be found printed in Appendix III. No rules under sec. 143 have as yet been made by the High Court. Rules framed by the Inspector General of Registration under sec. 69 of the Indian Registration Act and approved of by the Local Government will be found in Appendix IV, but they are not rules made under this Act.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this

Provisions as to temporarily-settled districts.

Saving as to tenures held in estates which have been permanently settled.

Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

Extended to Orissa (Not., Sept. 10th, 1891).

This section was originally section 20 of the Bengal Tenancy Act Bill, 1883. In the Statement of Objects and Reasons for the Bill it is stated with reference to this section, which saves to a landlord in a temporarily settled tract a right to raise the rent of any tenure when a new settlement of the revenue is made, that it is new and "may be defended as being in accordance with the views that prevail as to the relative position of the landlord, the tenant and the Government in such tracts. The Government has a right to raise its revenue on the occasion of a fresh settlement. Of this right, no act of the landlord can deprive it; and, accordingly, if the landlord were to be bound by a grant at fixed rates made by him so as to extend beyond the term of the settlement, the result would be that on the occasion of a new settlement, he might be exposed to the risk of having to pay an enhanced revenue without the possibility of recovering it from his tenant." (Statement of Objects and Reasons, Bengal Tenancy Bill, 1883, Chap. III, para. 21; Selections from the papers relating to the Bengal Tenancy Act, 1885, p. 189).

Section 192, however, as amended by Act I, B. C., of 1907, and Act I, E. B. C., of 1908, enables a Revenue Officer making a settlement of land revenue in a temporarily settled estate, to fix fair and equitable rents of his own motion, even where the landlord has granted a lease or made a contract purporting to entitle the tenant to hold the land free of rent or at a particular rent.

This section does not apply to a case in which an estate though not permanently settled in 1793 was subsequently permanently settled in 1811 (*Tamasha Bibi v. Asutosh Dhar*, 4 C. W. N., 513).

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that

Power to alter rent in case of new assessment revenue.

land free of rent or at a particular rent, and while the lease or contract is in force—

- (a) land-revenue is for the first time made payable in respect of the land, or
- (b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, [or of his own motion shall] fix a fair and equitable rent for the land in accordance with the provisions of this Act.

The words within brackets were inserted in this section by s. 60, Act I, B. C., of 1907, and Act I, E. B. C., of 1908.

Extended to Orissa, (Not., Oct. 17th, 1892).

This section was sec. 121 of the Bengal Tenancy Bill, 1883, as first introduced. In the Statement of Objects and Reasons (Chap. IX, para. 86) it is said that this section “in effect enacts that contracts fixing rent shall, in temporarily-settled tracts, hold good only until a fresh settlement is made. The reasons for the provision are similar to those stated above (para. 21) in connection with sec. 20” (now sec. 191). (See Selections from the papers relating to the Bengal Tenancy Act, 1885, p. 199). But it would seem that under the law as it stood before the Amendment Act I, B. C., of 1907, leases and contracts made by a landlord purporting to entitle a tenant of temporarily settled land to hold that land rent-free or at a particular rent, could only be avoided in the manner prescribed by the section, and, further, that a Settlement Officer could act under the section only on the application of the landlord or the tenant and could not of his own motion alter the rent agreed upon by the parties though the land might be assessed for revenue purpose at full rates. But the words added by Act I, B. C., of 1907 enable a Revenue Officer to fix rents in such cases of his own motion. The Notes on Clauses appended to the Amendment Bill of 1906 contain the following remarks :—

“This clause is intended to enable the Revenue Officer, in cases where a settlement of land revenue is being made, to fix a fair and equitable rent of his own motion for all lands, in respect of which the settlement of land revenue is being made. It sometimes happens that temporary settlement-holders, in the course of a settlement, fraudulently create fictitious rent-free

holdings or holdings at low rates of rent, with the object of reducing the value of the estate and getting the revenue lowered. The revenue demand is fixed on a fair valuation of the lands of the estate, but unless fair and equitable rents are fixed, the settlement-holder may be unable to meet the demand, and the Government revenue may be endangered. It is considered necessary, therefore, that the Revenue Officer should have power to settle fair and equitable rents of his own motion, in cases where the settlement-holder has collusively lowered the rental demand, with the object of preventing a new settlement being made on a fair revenue."

Rights of pasturage, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

*
Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.

Rights of pasturage, forest-rights and fisheries.—When pasture land, a forest, thatching grass land, or a tank is held by a tenure-holder or raiyat as part of his tenure or holding, the provisions of this Act will be fully applicable; but when they are held otherwise, only the provisions of this Act for the recovery of arrears of rent will be applicable, and they only "so far as may be." The provisions of this section make no change in the law on this subject which prevailed before the passing of this Act. Thus under the old law it was held that a right of occupancy could be gained in land used for grazing horses (*Fitzpatrick v. Wallace*, 11 W. R., 231) and in a tank situated on land let for cultivation, but not in a tank forming the principal subject of the lease, and with only so much land appurtenant as was necessary for its banks (*Nidhi Krishna Basu v. Ram Das Sen*, 20 W. R., 341; *Shibu Jelya v. Gopal Chandra Chaudhuri*, 19 W. R., 200), or in a tank not part of an agricultural holding but used for rearing and preserving fish (*Mahananda Chakravarti v. Mangala Keotani*, 31 Calc., 937) or when the tenant had merely a right to graze cattle, cut wood, catch fish or cut the grass of thatching grass land which grew spontaneously, and which he in no way cultivated (*Gur Dial v. Ram Dul*, 1 Agra, F. B., 15). No right of occupancy can be acquired in a fishery or *julkar* (*Uma Kanto Sarkar v. Gopal Singh*, 2 W. R., Act X, 19; *Sham Narain Chaudhuri v. The Court of Wards*, 23 W. R., 432; *Jaggabandhu Saha v. Pramatha Nath Rai*, 4 Calc., 767; *Bollai Sati v.*

Akram Ali, 4 Calc., 961). So, too, a lessor cannot sue under Act X of 1859 to enhance the rent payable by a lessee on account of a right leased to the latter to collect the lac insects from trees growing in the former's lands (*Gopal Singh Murah v. Sankari Paharin*, 23 W. R., 458). But a rent suit may be brought under a farming lease from the owner of a *hat* to collect a portion of the proceeds of sale from persons exposing their goods for sale in the *hat* (*Bangshodhur Biswas v. Madhu Mahaldar*, 21 W. R., 383; see also notes to secs. 3 (3), and 3 (5), pp. 22, 23.) or for rent of the description known as *phalkar* (*Gobind Sukal v. Gokul Bhakat*, 23 W. R., 304). That the provisions of this Act for the recovery of arrears of rent are only made applicable to rights of pasturage, forest rights, etc., "as far as may be," would appear to be due to the fact that the holders of such rights may have only limited or no interests in the land over which they exercise these rights (*Bishun Lal Das v. Khairunnissa Begum*, 1 W. R., 78; *Manohar Chaudhuri v. Narsingh Chaudhuri*, 11 W. R., 272; *Radha Mohan Mandal v. Nil Madhub Mandal*, 24 W. R., 200; *David v. Girish Chandra Guha*, 9 Calc., 183), though there is no such broad proposition that the settlement of a *jalkar* implies no right in the soil (*Rakhal Charan Mandal v. Wulson & Co.*, 10 Calc., 50). It is, therefore, doubtful how far the provisions of Chap. XII, relating to distraint and of Chap. XIV, relating to sales for arrears under decree, will apply to arrears of rent of such rights. It has been held that a *jalkar* is not an easement within the meaning of sec. 27 of the Limitation Act, IX of 1871 (*Parbati Nath Rai v. Madhu Parol*, 1 C. L. R., 592). But it may exist in India as an incorporeal hereditament (*Forbes v. Mir Mahammad Hossein*, 12 B.L.R., 210 : 20 W.R., 44) and is immoveable property within the meaning of the General Clauses Act (I of 1868) (*Fadu Jhala v Gaur Mohan Jhala*, 19 Calc., 544). *Jalkar*, or water rights, may include rights to drift the stranded timber as well as rights to fishing or any other interest of a similar kind in the produce of a river (*Amriteswari Debi v. Secretary of State*, 24 Calc., 504 : 1 C. W. N., 249). When a grant is merely of a right of fishery, the lessee acquires no right in the sub-soil nor is he entitled to retain possession when the water dries up (*Mahanand Chakravarti v. Mangala Keotuni*, 31 Calc., 937 : 8 C. W. N., 804). One who has a right of fishery in a public navigable river is entitled to such right also in a channel which is connected with it like an arm of the river system, and flows in the bed from which the river has shifted (*Jagendra Nurain Rai, v. Crawford*, 2 C. L. J., 569.) A suit for rent of a *jalkar* will lie in the Court where the suit for possession of the fishery would lie (sec. 144 of this Act; *Shibu Haldar v. Gopi Sundari Dasi*, 1 C. W. N., lxxxvii). The rent law in Bengal does not apply to ferry tolls (*Rachhea Singh v. Upendra Chandra Singh*, 27 Calc., 239). A suit for a consolidated amount including both the rent of an agricul-

tural holding and a fishery which was claimed as appurtenant to the holding is maintainable under sec. 45 (O. II, rr. 3 and 6 of Act V of 1908) of the Civil Procedure Code. A suit for the rent of a fishery is entertainable in the ordinary Civil Courts which have jurisdiction in rent suits (*Shib Prosad Chaudhury v. Vakai Pali*, 33 Calc., 601).

Phalkar.—*Phalkar* rent is, within the meaning of the section, anything payable for rights like forest rights (*Kanai Mahaldar v. Madhusudan Ghosh*, 6 C. L. J., 669).

Bankar.—A grant of the trees as distinct from the land in which the grantor reserves every forest-right except the one granted, is the grant of a forest-right within this section (*Abdulla v. Asrafali*, 7 C. L. J., 152).

Saving for conditions binding on landlords.

- 194.** Where a proprietor or permanent tenureholder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

Savings for special enactments.

Savings for special enactments.

- 195.** Nothing in this Act shall affect—

Savings for special enactments.

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act ;

- (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities ;

- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue ;
- (d) any enactment relating to the partition of revenue-paying estates ;
- (e) any enactment relating to *patni* tenures, in so far as it relates to those tenures ; or
- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Extended to the Chota Nagpur division, except the district of Manbhum (Not., Feb, 9th, 1903). But the present law there is to be found in Act VI, B. C., of 1908.

Settlement laws.—The principal laws relating to settlements in Bengal are Regulations VII of 1822, IX and XI of 1825, and IX of 1833. Act VIII, B. C., of 1879 is in force only in districts to which the Bengal Tenancy Act has not been extended.

Realization of rents in Government and Wards' Estates.—The Acts relating to this subject are Acts VII (B. C.) of 1868, and I (B. C.) of 1895.

Sales for arrears of Government revenue.—The laws relating to the avoidance of tenancies and incumbrances by sales for arrears of Government revenue are Acts XI of 1859 (secs. 37 and 52), VII (B. C.) of 1868, (secs. 11 and 12), and II (B. C.) of 1895. See *Brindaban Beharilal v. Nawani Sahai*, 35 Cal., 931.

Partition of revenue-paying estates.—The law now regulating the partition of revenue-paying estates in Bengal is Act V (B. C.) of 1897.

Patni tenures.—The laws relating to *patni* tenures are Regulations VIII of 1819 and I of 1820 and Acts VI of 1853 and VIII (B. C.) of 1865. Regulation VIII of 1819 being an enactment relating to *patni* tenures is under sec. 195 (e) of the Bengal Tenancy Act not affected by that Act, and the provisions of sec. 13 of that Act have no application to *patni* tenures (*Gyanoda Kanth Rai v. Bramomayi Dasi*, 17 Calc., 162). But the provisions of secs. 15 and 17 of the Bengal Tenancy Act apply to *patni* tenures. The object of sec. 195 (e) is that nothing in the Bengal Tenancy Act should interfere with the *patni* law in respect of *patni* tenures, but that in other respects the Bengal Tenancy Act should be held to apply, as supplementing the *patni* law (*Durga Prasad Bando-padhyia v. Brindaban Rai*, 19 Calc., 504). Where certain shares in certain

mahals were granted in a permanent lease along with certain jote lands situated in those *mahals* by one instrument which described it as a *patni* settlement, at a rent fixed in a lump and where in such a case there was no appropriation of the rent of the jote *jamas* as distinguished from those of the *patni taluks*: held that the settlement created by this lease cannot be regarded as a valid *patni* tenure although the parties may have originally agreed that the *patni* regulation will apply (*Hayes v. Bidya Nand Thakur*, 3 C. L. J., 373).

Dar-patni tenures.—*Dar-patni* tenures are not included within the terms of clause (e) of sec. 195. "The words 'in so far as it relates to those tenures, must,' we think, be treated as expressly limiting the provision to enactments relating to *patnis* properly and strictly so called and as intended to exclude those which relate to tenures, which, although resembling *patnis*, as *dar-patnis*, &c., are not strictly *patnis*, not possessing all the qualities of them." Section 13 of this Act, therefore, applies to sales of *dar-patni* tenures in execution of decrees (*Mahomed Abbas Mandal v. Braja Sundari Debi*, 18 Calc., 360). So, notwithstanding a stipulation in a *patni* lease that on default of any instalment of rent, the landlord shall be entitled to realize it by the sale of the *patni*, the *patni-dar* is personally liable (*Sourendra Mohun Tagore v. Sarnomoyi*, 26 Calc., 103).

Construction of Act.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

"In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme Legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants." (Report of the Select Committee, dated 12th February, 1885. Selections from papers relating to the Bengal Tenancy Act, 1885, p. 389) Under sec. 5 of the Indian Councils Act, 1892, (55 and 56 Vict., c. 14, s. 5,) the local legislature of any province may with the previous sanction of the Governor-General repeal or amend as to that province any Act or Regulation of the Supreme Legislature.

SCHEDULE I.

(See Section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

NUMBER AND YEAR.	SUBJECT OF REGULATION.	EXTENT OF REPEAL.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamindars, independent talukdars and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zilla of Cuttack, including the parganas of Pattaspur, Kummadichour, and Bagrae, at present included in the zilla of Midnapur.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of Section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

NUMBER AND YEAR.	SUBJECT OF ACT.	EXTENT OF REPEAL.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers. (1)	The whole Act.

Act of the Governor-General in Council.

NUMBER AND YEAR.	SUBJECT OF ACT.	EXTENT OF REPEAL.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

(1) The following section of the Bengal Tenancy (Amendment) Act, 1888, further repeals Act V, B. C., of 1894. See note, p.

11. Bengal Act V of 1894 (an Act to remove doubts which have arisen in connection with the re-settlement of land-revenue in temporarily-settled areas, and to amend the Bengal Tenancy Act, 1885) is hereby repealed.

Repeal of Bengal Act V of 1894.

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57).

FORM OF RECEIPT.

(TENANT'S PORTION.)

1. Serial number of receipt
2. Estate ; Village ; Thana
3. Tenant's name ; son of
4. Area of tenure or holding, if known { *Nukdi* Bighas
 Bhauri Bighas
Rent of tenure or { Rupees ...
holding. { Maunds ...
 Julkur, Rs.
 Bunkur, "
 Phulkur, "
Government Cesses { Road Cess, Rs.
Public Works Cess, Rs.
5. Signature of the landlord or his authorized agent.

FORM OF RECEIPT.

(LANDLORD'S PORTION.)

1. Serial number of receipt
2. Estate ; Village ; Thana
3. Tenant's name ; son of
4. Area of tenure or holding, if known { *Nukdi* Bighas
 Bhauri Bighas
Rent of tenure or { Rupees ...
holding. { Maunds ...
 Julkur, Rs.
 Bunkur, "
 Phulkur, "
Government Cesses { Road Cess, Rs.
Public Works Cess, Rs.
5. Signature of the landlord or his authorized agent.

Section 55 of the Bengal Tenancy Act, 1885, provides:—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

This amended form of receipt was sanctioned by the Government of Bengal by Government Resolution, dated 10th July 1889, published in the *Calcutta Gazette*, 24th July, 1889, Supplement, p. 1872.A Special form of receipt for use in the Orissa Division, sanctioned by Government Notification, No. 273 L. R., 21st January, 1903, will be found in the *Calcutta Gazette*, January 28th, 1903, Part I, pp. 31, 32.

See also notes to sec. 56 p. 202.

FORM OF ACCOUNT.

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c.)	Rs. A. P.
		Bighas Rate	
	<i>Nakdi</i>		
	Government Cesses	Bighas Maunds	Rs. A. P.
	<i>Bhauji</i>		
	Jalkur	...	...
	Bunkur	...	...
	Phulkur	...	...
		Maunds	Rs. A. P.
4. Demand of the year		...	...
5. Balance of former years (Bakaya)		...	...
6. Total demand (current and arrear)		Current demand	Rs. A. P.
7. Paid each on account of		Arrear demand...	
		Maunds	
8. Paid in kind		...	...
9. Balance outstanding at end of year			Rs. A. P.
10. Signature of the landlord or his authorized agent.			

FORM OF ACCOUNT.

1. Year	2. Tenant's name	3. Particulars of holding—(area, rent, &c.)	Rs. A. P.
		Bighas Rate	
	<i>Nakdi</i>		
	Government Cesses	Maunds	Rs. A. P.
	<i>Bhauji</i>		
	Jalkur	...	...
	Bunkur	...	...
	Phulkur	...	...
		Maunds	Rs. A. P.
4. Demand of the year		...	...
5. Balance of former years (Bakaya)		...	...
6. Total demand (current and arrear)		Current demand	Rs. A. P.
7. Paid each on account of		Arrear demand	
		Maunds	
8. Paid in kind		...	...
9. Balance outstanding at end of year			Rs. A. P.
10. Signature of the landlord or his authorized agent.			

A special form of account for use in the Orissa division sanctioned by Govt. Notification No. 377, L. R., 22nd January, 1894, will be found in the *Calcutta Gazette*, 24th January, 1894, Part I, p. 83.

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year.	The date of the breach.
[1 (a) To eject a non-occupancy raiyat on the ground of the expiration of the term of his lease.	Six months.	The expiration of the term.]
2. For the recovery of an arrear of rent [in a suit brought by—		
(i) a sole landlord,		
(ii) the entire body of landlords, or		
(iii) one or more co-sharer landlords;]		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding;	Six months.	The date of the service of notice of the deposit.
(b) in other cases ...	Three years.	[The last day of the agricultural year in which the arrear fell due.]
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat [a raiyat or an under-raiyat]	Two years.	The date of dispossession.

The new article 1 (a) has been added and the words in brackets have been inserted by sec. 61, Act I, B. C., of 1907 and Act I, E. B. C., of 1908. The words "the last day of the agricultural year &c" in art. 2, (b) have been substituted for the words "the last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails" and the words "a raiyat or an under-raiyat" are substituted for the words an "occupancy raiyat" in article (3).

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days.	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days.	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, [in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877. (Act IX of 1908).	Three years.	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

The words in brackets in article 6 have been substituted by sec. 61, Act I, B. C., of 1907 and Act I, E. B. C., of 1908, for the words "under this Act, or any Act repealed by this Act."

Article 1.—A landlord who has waived his right to sue for the cancelment of a lease on the raiyat's failure to pay six successive instalments is not barred by limitation from suing for cancelment on further breaches of the covenant (*Duli Chand v. Meher Chand Sahu*, 8 W. R., 138). But in a suit for the cancelment of a lease on the ground of an alleged breach of its conditions, viz, the defendant's failure to plant 2,000 betel-nut trees within five years from the date of the lease, it was held that the plaintiff's cause of action was not a continuing or an annually recurring one, but accrued when the breach actually took place, (*i. e.*) on the expiration of the stipulated five years, and that plaintiff was bound to sue within one year from that date (*Kali Kumal Majumdar v. Jumut Ali*, 11 W. R. 452 : 3 B. L. R., App., 47).

For a suit brought to eject a tenant for misuse of the land in a manner which has rendered it unfit for the purposes of the tenancy, the period of limitation is two years under art. 32, Sch. II of Act XV of 1877, (Act IX of 1908) (*Soman Gope v. Raghubar Ojha*, 24 Calc., 160 : 1 C. W. N., 223).

Article 1 (a).—Section 45 has been repealed in Bengal, and the period of limitation for a suit for the ejectment of a non-occupancy raiyat on the ground of the expiration of the term of his lease has been transferred to its more appropriate place, Schedule III. See note, p. 161.

Article 2.—This article includes a suit to recover under a lease, and there no distinction as to the form of the lease, or as to whether it is registered or not (*Ishwari Prasad Narain Sahi v. Crowdy*, 17 Calc., 469). Suits for rent founded on registered contracts in respect of lands subject to the provisions of the Tenancy Act are governed by the limitation provided by this article (*Mackenzie v. Mahomed Ali Khan*, 19 Calc., 1). A registered lease granted for building purposes and for establishing a coal depot, not being a lease of land for agricultural or horticultural purposes, does not come within the operation of the Tenancy Act and the limitation applicable to a suit for rent reserved in such a lease is that prescribed by art. 116 of the Limitation Act. (*Raniganj Coal Association v. Judu Nath Ghosh*, 19 Calc., 489). The period of limitation applicable to a suit for compensation for use and occupation of land is six years under art. 120 of the Limitation (*Watson & Co. v. Ram Chand Datta*, 23 Calc., 799).

* The words introduced into this article and into article 6 by s. 61, Act I, B. C., 1907, it is said in the Select Committee's Report on the Bill, "will restore to suits for arrears of rent and to executions of rent decrees the rules of limitation originally intended by the framers of the Act to apply to such rent and execution proceedings, as to the applicability of which, as explained in the Note on Clause 39 in the Statement of Objects

and Reasons, and in the note on clause 34 above, there may be some doubt."

See also notes to ss. 148 A, 158 B, 169, and 188 A, pp. 471-73, 503, 527, 597.

Article 2. (a).—By a condition in the lease of a *taluk* additional rent became payable in respect of all lands, which, not being in a state of cultivation at the time of the lease, should be subsequently brought into cultivation, so soon as the lessee had enjoyed them rent-free for the space of seven years. Rent having become due under the condition on certain lands, which had not been in a state of cultivation at the time of the making of the lease, the lessee deposited in Court, as the entire rent payable in respect of the *taluk*, the same amount as he had paid in previous years. In a suit brought a year after the lessor had notice of such deposit, to recover the entire rent payable in respect of the lands newly brought into cultivation, it was held that such suit, having been instituted more than six months after service of notice of such deposit on the lessor, was barred under sec. 31 of Bengal Act VIII of 1869 (*Ram Sankar Senapati v. Bir Chandra Manikya*, 4 Calc., 714). But a suit for rent due for a period prior to a deposit being made under Act VIII (B. C.) of 1869 is not barred, where the contention of the defendants is that the tenure was the depositor's and that the rent was due from him and not from them (*Ramdin Singh v. Chandi Prashad Singh*, 21 W. R., 278), and this period of limitation does not apply to a deposit made before the rent is due (*Tara Mani Kunwari v. Jiban Mandar*, 6 W. R., Act X, 98; *Ahmed Hossain v. Keramat*, 8 W. R., 353; *Surja Kant Acharya v. Hemanta Kumari*, 20 Calc., 498. But see *Mahomed Shuhurulla v. Rumya Bibi*, 7 W. R., 487). The notice of deposit is to be served by the Court, and it is, therefore, to be presumed until the contrary be shown, that the notice was issued and duly served (*Bijai Govind Singh v. Karu Singh*, 18 W. R., 531). When co-sharer landlords are jointly and severally entitled to the rent claimed, the service of a notice of deposit of rent on any one of them will not reduce the period of limitation to six months, as provided in this article (*Rup Chand Mahton v. Gudar Singh*, 6 C. W. N., 15 : 29 Calc., 283). If a tenant relies upon clause (a) Art 2 he must prove that there was an application within the terms of sec. 61, sub-section (2) and that a proper deposit was made under sec. 61 and notice served on the landlord under sec. 63., (*Mir Tapurq Hossein v. Gopi Narayan*, 7 C. L. J., 251). A suit by a co-sharer landlord when he sues for the whole rent making his co-sharers parties is governed by this article (*Sashi Kumar Mirbahar v. Seeta Nath Banerjee*, 35 Cal., 744). See also *Jogendra Nath Roy v. Nagendra Nath Roy*, (11 C. W. N., 1026). The amendment by Act I, B. C., of 1907 and Act I, E. B. C., 1908

makes this article applicable to all suits for rent whether brought by a sole landlord or by a co-sharer landlord.

Article 2 (b).—The last day on which a suit for recovery of arrears of rent can be instituted under sec. 29, Act VIII (B. C.) of 1869, is the last day of the third year from the close of the year in which the rent became payable (*Kashi Kant Bhattacharji v. Rohini Kant Bhattacharji*, 6 Calc., 325. See also *Durga Das Chaturji v. Nobin Mohan Ghosal*, 6 W. R., Act X, 63; *Umur Narain Puri v. Ararat Lal*, 7 W. R., 301; *Baikant Ram Rai v. Sharfunnissa Begam*, 15 W. R., 523; *Haro Kumar Ghosh v. Kali Krishna Thakur*, 17 Calc., 251; *Barnamayi Dasi v. Barnamayi Chaudhurani*, 23 Calc., 191). The limitation of three years allowed for a suit to recover arrears of rent must reckon, not from the date of instalments, but from the day of the year in which the arrear becomes due (*Gobind Kumar Chaudhri v. Haro Gopal Nag*, 11 W. R., 537). This article does not apply to a suit brought by an assignee of arrears from the landlord (*Mahendra Nath Kalamori v. Kailash Chandra Dogra*, 4 C. W. N., 605), unless the whole interest of the landlord is transferred (*Sashi Kumar Mirbahar v. Seetanath Banerjee*, 35 Cal., 744). The Rent Act recognizes payment in kind as rent. Non-payment in kind, therefore, must be deemed to be an arrear of rent and as such a suit may be brought to recover it within three years from the last day of the Bengali year in which it shall have become due. But inasmuch as the actual grain is not producible at any time within three years from the time when it became due, the money value of the grain, as it stood when it was ready for delivery and ought to have been delivered, must necessarily be taken to represent the grain itself (*Krishnabandhu Bhattacharji v. Rotish*, 25 W. R., 307). See note, p. 198. The right of a landlord to recover any sum payable by a tenant as drainage charges under Act VI, B. C., of 1880, accrues not on the date on which the Collector assessed the amount payable by the tenant, but on the date on which the landlord himself enters into an engagement with the government to pay the cost with which he is charged under the Act (*Man Mohini Dasi v. Priya Nath Basali*, 8 C. W. N., 640). A suit to recover such drainage charges is governed by cl. (2) Sch. III of this Act (*Nafar Chandra v. Jyoti Kumar Mukhurji*, 11 C. W. N., 57).

The word "arrear" in the third column of this article means "rent" in arrear, and where the Fasli year prevails, the suit must be brought within 3 years of the Jeyt year in which it fell due. The period of limitation is therefore not 3 years, but 2 years and 9 months (*Ishwardahari Singh v. Ram Brich Rai*, 7 C. L. J., 106). A suit for the recovery of money payable in respect of the right to cut jungle for a certain time is governed by this article (*Abdulla v. Asrafi*, 7 C. L. J., 152).

When the period of limitation referred to in this article has expired, the plaintiff cannot be allowed to fall back upon art. 132, Sch. I of the Limitation Act (*Kali charan Bhaumik v. Harendra Lal Rai*, 4 C. L. J., 553).

As regards the changes made by s. 61, Act I, B. C., 1907 in this article, it is said in the Select Committee's report on the Bill of 1906 :

"The present state of affairs regarding limitation for the bringing of suits for recovery of rent is anomalous. By this amendment, which has been made on the suggestion of the High Court, we have attempted to remove the anomaly. The change will affect those portions of the Province only where the *Amlī* or *Fasli* year prevails. There will result a slight extension in favour of the landlords of the period of limitation, and there can be no reasonable objection from the tenants' point of view. The present custom fulfils no particular object."

Article 3.—The introduction of this article is due to a proposal of the Rent Commission, who in their report (Vol. I, § 158, p. 71) say : "We have provided that one year shall be the period of limitation for a suit by a raiyat against his landlord to recover the possession of a holding from which such raiyat has been illegally ejected by such landlord in any case not governed by sec. 9 of the Specific Relief Act, I of 1877 ; in other words, for a suit intended to try not merely the question of dispossession without consent, but also the question of title." The Select Committee on the Bill observed regarding this article :—"We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy-raiyat of land comprised in his holding, and, following the precedent presented by sec. 81 of the Central Provinces Act, 1881, we have fixed the period at two years from the date on which he is ejected." (Selections from papers relating to the Bengal Tenancy Act 1885. p. 242) In *Ramzani Bibi v. Amu Baijari*, (15 Calc., 317), it was held that this article relates to suits brought by an occupancy-raiyat against his landlord, and not to a suit brought against a third party, who is a trespasser. In *Chandra Kishor De v. Raj Kishor Mazumdar*, (15 Calc., 450), it was similarly ruled that the suit mentioned in sec. 184, and Sched III, Part I, art. 3, of the Bengal Tenancy Act., 1885, means a suit by an occupancy raiyat as such, that is, an occupancy-raiyat claiming a right of occupancy as against his landlord. Then, in *Saraswati Dasi v. Hari Taran Chakravarti*, (16 Calc., 741), it was decided that this article applies to all suits by occupancy raiyats for the recovery of possession of land from which they have been dispossessed by their landlords, and in which the title of the raiyats is denied and put in issue. "Their is nothing in the terms of the law," it was said, "to lead us to suppose that the legislature provided only for suits of a possessory nature, such as was previously

dealt with by sec. 27 of Bengal Act VIII of 1869." This was followed in the case of *Ramdhan Bhadra v. Ram Kumar De*, (17 Calc., 926), in which, it was observed, but as an *obiter dictum*, by Ghose, J., that "the words of article 3 of the new Act seem to indicate, although the matter is not clear, that *all* suits for the recovery of possession wherein an occupancy right may be claimed are to be governed by the limitation prescribed in that article." But in *Julmati v. Kali Prasanna Rai*, (28 Calc., 127 : 4 C. W. N., 803), in which the plaintiffs sued as occupancy raiyats to recover possession of land from which they had been dispossessed by the defendants, one of whom was one of their landlords (*i. e.* a co-sharer landlord) and the others were persons who had acted in collusion with him, it was decided by a Full Bench that this article was applicable. Then, in *Bheka Singh v. Nakched Singh*, (24 Calc., 40) it was ruled that the operation of the article is not restricted to suits against the landlord alone, and that it applies to a suit brought against a tenant with whom the land has been settled by the landlord. "We are not aware of any decision," it was observed in this case, "(there is none reported) which limits the article against the landlord alone, and holds that it does not apply to a suit against a person holding under the landlord. The omission to add the landlord as a party would not in our opinion extend the period of limitation from two to twelve years. It is the circumstance of the ouster, and the fact that a particular person has ousted the plaintiff, which gives rise to the necessity of his proving his occupancy right as against that person and, therefore, makes it necessary for him to sue to recover possession of the land, claiming it to be held by him as an occupancy raiyat." See also *Rakhit Mahant v. Pudda Bauri*, (9 C. W. N., 54). So, too, when the dispossessing defendants have been inducted into the land by the agents of the landlord, (*Chintamani Sahu v. Upendra Nath Sarnakar*, 4 C. W. N., 326). So where an occupancy raiyat is dispossessed by a person who has purchased the rights of some of the tenants at auction in execution of a decree for arrears obtained by the landlord, such person must be held to be acting in collusion with the landlord and the suit is governed by this article (*Aminuddin Munshi v. Ulfatunnissa Bibi*, 9 C. L. J., 131). The two year's period of limitation applies whether the dispossession be by a fractional landlord, the sole landlord, or the entire body of landlords (*Parameswar v. Kali Mohan*, 28 Calc., 127 : 4 C. W. N., 800; *Annada Sundari Chandalini v. Kebabram Changa*, 7 C. W. N., 542.) But when the landlord is no party to the suit and there is nothing to show that he had any hand in the ouster, the period of limitation applicable is twelve years, though the defendant may claim to hold under the same landlord as the plaintiff (*Iradat v. Dalu*, 1 C. W. N., 573). See also *Maharam Ali v. Tukha Ali*, (9 C. W. N., ccxxxi); and *Ramijulla v. Ishab Dhali*, (6 C. W. N., 702; 29 Calc., 610),

which overrules *Hara Kumar v. Nasarudin*, (4 C. W. N., 665), in which it was held that this article applies, if after the ouster the dispossessing defendants took a settlement from the landlord. If the suit is brought against the landlord, it is immaterial whether he is described as such in the plaint or not (*per Ghose J.*, in *Ramdhan Bhadro v. Ram Kumar De*, 17 Calc., 930). But the special limitation of two years, as laid down in this article, does not apply to a case where an occupancy raiyat has been dispossessed from his holding by his landlord, not as a landlord, but as a purchaser of the holding in execution of a decree for rent (*Abhai Chavan Mukhurji v. Titu*, 2 C. W. N., 175 ; *Mahomed Khalil v. Hirendro Nath Bhattacharji*, 5 C. L. J., 650) ; or as purchaser of the right, title and interest of a tenant at a sale held in execution of a rent decree obtained by him as a co-sharer landlord (*Brajo Kishor Mahapatra v. Saraswati Dasi* 6 C. W. N., 333), or to one where a suit is brought by a person who has purchased the right of an occupant tenant as against one who happens to be the landlord and who claims to maintain his possession by virtue of a decree which he has obtained for possession as against the occupant tenant, the mortgagor (*Dinobandhu Shaha v. Lalit Mohan Maitro*, 2 C. W. N., 595). When a raiyat has been dispossessed by one co-sharer landlord but his title has been recognised by all parties concerned and the recognition has been up to within two years of the institution of the suit, the suit is not barred under this article (*Saraf-udin Mandal v. Chandra Mani Gupta*, 5 C. W. N., 405). This article does not apply to a suit for the recovery of possession of homestead land not held as part of an occupancy holding (*Abdul v. Kulban*, 1 C. W. N., clxxi), or to suits brought by other than occupancy raiyats (*per Ghose J.*, in *Ramdhan Bhadro v. Ram Kumar De*, 17 Calc., 930), *e. g.*, by under-raiyats for the possession of land sub-let to them by an occupancy-raiyat (*Bhagban Chandra Saha v. Jagneshwar Ghosh*, 2 C. W. N., cccxviii). This period of limitation runs from the date of actual dispossession. A plaintiff cannot have a fresh start of limitation from the date of attachment by a Criminal Court under sec. 146, Crim. Pro. Code (*Deo Narain Chaudhuri v. Webb*, 28 Calc., 86 : 5 C. W. N., 160).

All this is changed in Bengal by the substitution by s. 61 (3), Act I, B. C., of 1907 of the words "a raiyat or an under-raiyat" for "an occupancy-raiyat."

Article B.—This article applies not only to decrees under the Bengal Tenancy Act, but on its introduction into any territory, division or district to decrees made under "any Act repealed by this Act,"—consequently, to decrees passed under Act X of 1859 or Act VIII, B. C., of 1869, as the case may be. The words "inclusive of costs" in this article set aside the ruling of the High Court in *Kadambini Debi v. Kailash Chandra Pal*, (6 Calc. 554). Decrees for arrears of rent are decrees made under

the Tenancy Act within the meaning of this article, and the "final decree" mentioned in this article must be the final decree in the suit, and cannot be held to include an order in appeal upon an application to set aside that decree under sec. 108 of the Code of Civil Procedure (*Baikanta Nath Mittra v. Aghor Nath Basu*, 21 Calc., 387.) An application for the execution of a decree for rent made more than three years after the date of that decree is barred, even though the decree-holder has taken some step aid of execution in the interval (*Sahib Rai v. Gangadhar Prasad*, 1 C. L. J., 101n). An application for execution of a decree for a sum not exceeding Rs. 500, obtained by a co-sharer landlord for his share of the rent is governed not by this article, but by art. 179 of Sch. II of the Limitation Act (*Kedar Nath Banurji v. Ardha Chandra Rai*, 29 Calc., 54 : 5 C. W. N., 763). But this is changed by s. 61, Act I, B. C., 1907. See note to article 2, p. 615.

Article 6. Limitation runs from date of decree.—Under sec. 58, Act VIII (B. C.) of 1869, limitation runs from the date of the decree and not from the dates of payment of instalments (*Mamtazul Hak v. Nirbhay Singh*, 9, Calc., 711 : 12 C. L. R., 318). Similarly, under the Tenancy Act, limitation runs from the date of the decree and not from the date fixed for payment of the decretal amount (*Ram Sadoi Mukhurji v. Dwarka Nath Mukhurji*, 22 Calc., 644). An acknowledgment of liability under s. 19 of the Limitation Act made by a judgment-debtor to the decree-holder's right to execute a rent decree gives the decree-holder a fresh starting point for counting the period of limitation prescribed by art 6, Sch. III (*Harihar Lal v. Gunendra Prasad*, 9 C. W. N., 1025 ; *Rukhal Chandra Tewari v. Hemangini Debi*, 3 C. L. J., 347).

Applications in continuation of former proceedings.—When the execution of decrees has been unavoidably stayed owing to proceedings in Court *e. g.*, proceedings to set aside the decrees which it is sought to execute, the Courts have mitigated the rigour of the provisions of the Limitation Act by regarding applications for execution made after the expiry of the period of limitation, not as fresh applications for execution, but as applications made in continuation of former proceedings. This rule was first laid down in the case of *Piaru Fuhobildarini v. Nawir Hossein*, (23 W. R., 183), which was followed in *Paras Ram v. Gardner*, (1 All., 355) ; *Kalyanbhai Dipchand v. Ghanashyn Lal Jadunathji*, (5 Bom., 29) ; *Issari Dasi v. Abdul Khalak*, (4 Calc., 415) ; and *Basant Lal v. Batul Bibi*, (6 All. 23). This doctrine was applied to a rent decree under Act VIII (B. C.) of 1869 in *Chandra Pradhan v. Gopi Mohan Saha*, (14 Calc., 385), and to decrees under this Act in *Baikanta Nath Mittra v. Aghore Nath Basu*, (21 Calc., 386) ; but only so far as regarded property mentioned in the former application. See also *Ram*

Sundar Sanyal v. Gopeshar Mustafi, (3 Calc., 716); and *Hari Charan Basu v. Sabaidar*, (12 Calc., 161). The decree-holder obtained a decree for rent on the 12th January 1892, and made an application for execution on the 10th March 1892, which was dismissed on the ground of informality on the 30th June 1892. On the 1st July 1893, a temporary injunction was issued, restraining the decree-holder from executing the decree pending the decision of a suit brought by the judgment-debtor in which it was *enter alia* prayed to set aside the decree which had been executed. The suit was decreed by the High Court, but on appeal it was dismissed and the injunction was discharged on the 20th May 1897; *he'd*, that the application of the rent decree dated 18th May 1897 was barred; the decree-holder was not entitled to a fresh starting point from the 20th May 1897 (*Sarup Ganjan Singh v. Watson & Co.*, 6 C. W. N., 735).

Court fees.—Section 7, cl (ii) (c) of the Court Fees Act (VII of 1870) does not apply to a suit for possession of an occupancy holding brought by the tenant against the landlord, as well as the person whom the landlord has inducted into the land; the Court-fee payable on the plaint in such a case must be computed on the market value of the property which the plaintiff seeks to recover, *Farzand Ali v. Mohant Lal Puri*, (32 Calc., 268).

APPENDICES

APPENDIX I.

RULES UNDER THE BENGAL TENANCY ACT MADE BY THE LOCAL GOVERNMENT. (1)

NOTIFICATION.

No 2705T. R.—*The 31st October, 1907.* In exercise of the power conferred upon him by sub-section (2) of section 61, section 134 and section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Lieutenant-Governor is pleased to direct that the following revised rules under the said Act, which, subject to the modifications now made therein, were published in accordance with the provisions of sub-sections (1), (2) and (3) of section 190 of the said Act, at pages 1371--1398 of the Calcutta Gazette, Part I, of the 7th August 1907, shall be substituted for the like rules, which were published with the notification dated the 21st December 1885, at pages 1255—1268 of the Calcutta Gazette, Part I, dated the 23rd idem, as subsequently added to, modified or altered up to the date of this notification.

E. A. GAIT,
Offg. Chief Secy. to the Govt. of Bengal.

Government Rules under the Bengal Tenancy Act, 1885 (VIII of 1885), [as modified by subsequent legislation.]

CHAPTER I.—GENERAL.

1. In carrying out the following rules, Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII of 1885.

(1) By Notification No. 292, L. R., published in the *Calcutta Gazette* of the 25th Jany. 1893 Part I, p. 59, those rules were declared to be in force in Orissa so far as they relate to the sections of the Act, which have been or may be extended to Orissa.

2. Except where otherwise provided for by law or by these rules all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue ; and the proceedings and orders of each Revenue-officer under this Act shall be subject to the supervision and control of the Revenue-officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

Board's Instructions.

Under this rule Assistant Superintendents of the Survey Department appointed to be Revenue-officers are declared to be subordinate to Deputy Superintendents of the Survey Department appointed to be Revenue-officers. Assistant Settlement Officers are declared to be subordinate to Settlement Officers, and Settlement Officers are declared to be subordinate to the Director of Land Records or to the Commissioner, or Collector, as the Board shall, in each case, direct.

3. Where no other mode of service of notice is prescribed by the Bengal Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure ; and if it is addressed to a number of persons occupying or owning different holdings in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, or by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid.⁽¹⁾

⁽¹⁾ This rule is evidently intended to apply to those cases where the Act speaks of the service of a notice and not merely of the giving of a notice (*Madhab Ram v. Dayal Chandra Ghosh*, 25 Cal., 445 : 2 C. W. N., 108). A notice to quit under sec. 49 must be served in the mode prescribed by this rule (*Tarudas Malakar v. Ram Dayal Malakar*, 2 C. W. N., 125 ; *Loknath Gop v. Pitambar Ghosh*, 3 C. W. N., 125 ; *Mukhan Lal v. Kuldip Narain*, 27 Cal., 774).

CHAPTER II.—STAPLE FOOD-CROPS AND PRICE-LISTS.

4. *Section 39 (1).*—The local areas under sub-section (1) of section 39 shall be those entered in Schedule II annexed to these rules, and the mart specified in the same schedule for each local area shall be that at which prices shall be recorded.

5. *Section 39 (7).*—The Collector, after such inquiry into the relative extent to which particular food-crops are grown in his district, as he may think necessary, shall cause a notice to be affixed in his office and in the sub-divisional office, specifying the food-crop or food-crops which in his opinion is or are most extensively grown in each local area.

The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands and shall fix a day, not being later than fifteen days after the publication of such notice, on which objections will be taken into consideration.

On the day so fixed the Collector shall take into his consideration the objections, if any, to the enumeration of staple food-crops proposed in the notice; and shall report his opinion thereon to the Board of Revenue.

The Board of Revenue shall submit the Collector's opinion to the Local Government, with such remarks as may seem to them necessary.

The Local Government, after considering the reports of the Collector and the Board of Revenue, shall determine and notify in the *Calcutta Gazette* what shall be deemed staple food-crops in each local area.

Until further orders the crops shown in column 3 of Schedule II hereto appended shall be deemed staple food-crops for the purposes of section 39.

6. Price-lists of staple food-crops shall be prepared on one market day in the month at intervals of not less than twenty days. This market day shall be selected by the Collector, subject to the control of the Board of Revenue.

7. The price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to which the price-list refers on the day selected under the last preceding rule.

Board's Instructions.

Under this rule the price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart, to which the price-list refers, on the day prescribed in rule 6 of the rules issued by Government—

(a) The price recorded should be the average of the prices of the different qualities of the staple crop.

- (b) The price should always be given in seers of 80 *tolas*, standard weight, per rupee.
- (c) Care should be taken that the price of the staple crops *grown* in the locality is taken into account and not of those *imported*.
- (d) When rice is the staple, the price to be recorded is the average of the common qualities of husked rice (*mota chual*), as distinguished from paddy, consumed for the time being by the middle and poorer classes.
- (e) The average price of the various kinds of *aman* should be shown throughout the year, and that of *aus* separately during the months in which it is sold.
- (f) The price of *old* and *new* crop should be shown separately when both are being sold at the mart.

8. (1) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector may authorize a kanungo to prepare the lists.

(2) Where prices are recorded at marts, other than those at the headquarters of districts, the Collector may, with the sanction of the Commissioner, authorize a Sub-Registrar to prepare the lists on days when no gazetted officer or kanungo is available.

(3) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price-list and the list shall be signed by at least one of them as well as by the officer preparing it.

9. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(a) the date of his visit to the mart at which prices are to be recorded ;

(b) the names of vendors and purchasers, the quantities sold and the price thereof, for any sales effected in his presence.

Board's Instructions.

The record prescribed to be kept up with the officer charged with the preparation of price-lists under this rule should also contain entries showing the vernacular names of the description of rice and the qualities of the other staples from time to time, so as to afford a basis for comparison with qualities and price which may be recorded at any future time, and also in order that whenever a change occurs in the officers charged with the preparation of these lists, the new officers may have the means of ascertaining the qualities of the staples selected by his predecessor.

10. When price-lists are prepared at the sadar sub-division by an officer other than a Covenanted Deputy Collector, or at other sub-divisions by an officer subordinate to the Sub-divisional Officer, or by a Sub-Registrar, they shall be submitted to the Covenanted Deputy Collector, or to a Deputy Collector specially nominated by the Collector for the purpose, or to the Sub-Divisional Officer, as the case may be. Such officer shall scrutinize the lists; he may call for explanation and cause manifest errors to be corrected and, having satisfied himself of the accuracy of the lists, he shall countersign them.

11. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or Sub-divisional Office, and at every police-station and munsifi in the local area.

Board's Instructions.

The lists shall be published under this rule in the form subjoined :—

Price-list for month of 19 . for local area
sub-division district is published
under clause (3) of section 39 of the Bengal Tenancy Act, 1885
(VIII of 1885).

Any objections which any landlord or a tenant of the aforesaid local area may have to any entry in this list should be presented to the Collector, in writing, within a month from the date of its publication :—

Staple food-crop.	Number of seers of 80 tolas sold per rupee.	REMARKS.

District

Sub-division

Collectorate

Dated

19 .

Signature of the officer preparing
the list.

Rank

12. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions of the officers, who prepared and counter-signed them, and of the Collector, on such objections.

Board's Instructions.

(a) The lists shall be submitted to the Board in the following form :—

Price-list for the month of _____ *190* .

District _____

Local area _____

Mart _____

Staple food-crop or crops.	Number of seers of 80 tolas standard weight per rupee.	Substance of objection [1] if any.	Opinions of the officer who prepared the list and of the officer who examined it under rule 10 and of the Collector on such objection.	REMARKS.

[1] Any objections made to this list must be forwarded with it.

Signature of officer who examined the list under Rule 10 _____ *Signature of officer who prepared the list* _____

Rank _____ *Rank* _____

Date _____ *Date* _____

- (b) Whatever the dates fixed for recording prices in local markets may be, the lists should be submitted to the Board of Revenue immediately after the expiry of one month from the date of their publication in the mart to which they refer.
- (c) In submitting the lists to the Board, the recording officer should invariably explain in the column of remarks causes of variation in prices quoted during the period under report as compared with the last preceding return. The Collector should, after satisfying himself as to the correctness of the statement, initial it. The Collector should, in submitting the lists for the whole district, explain any marked difference between prices ruling in the several local areas of his district.

CHAPTER III.—LANDLORDS' IMPROVEMENTS.

13. *Section 80.*—An application for the registration of a landlord's improvement may be presented to the Collector of the district or to the officer in charge of the sub-division in which the land benefited by the improvement is situated, or to any Assistant or Deputy Collector who may be specially appointed by the Government to receive such application. It shall, as far as practicable, be in the form (Form I) specified in Schedule I appended to these rules, and five copies shall be submitted in respect of each village benefited.

14. The officer receiving the application shall fix a date for hearing objections to the same. He shall send, by registered letter, copies of the application, with intimation of the date so fixed, to those of the tenants in each village whose names are mentioned in column 8 of the application. He shall also give notice to the tenants generally by beat of drum and by causing a copy of the application and notice of the date, fixed for hearing objections thereto, to be fixed up in the presence of not less than two persons in some conspicuous place in every such village.

The expenses of such service and publication shall be borne by the applicant for registration.

15. The officer may make over the application to any of his subordinates, not being below the rank of a Sub-Deputy Collector, for local inquiry and report, and shall, in that case, fix a date for hearing the report, and shall cause such date to be notified to the parties concerned in the manner set fourth in rule 14. The inquiry shall be limited to the ascertainment of the fact whether the alleged improvement is of such a nature as to come within the meaning of section 76 (2) of the Bengal Tenancy Act, or not; whether it falls under sub-clause (c) of that section, and if so, whether any enhancement of rent is being paid for the original improve-

ment, and whether the cost of the improvement has been correctly stated in the application.

16. On the date so fixed, or on any date to which the proceedings may be adjourned, the officer shall hear summarily such of the parties and their witnesses as may attend, and shall consider any report submitted to him under rule 15. He shall then decide whether the work is an improvement as defined in section 76 (2) of the Bengal Tenancy Act, and whether the landlord is entitled to register it, and shall accordingly order it to be registered with such modifications of the figure in column 6 of the application as he may deem fit, or shall refuse registration. If the work is fit to be registered as an improvement, the officer shall record clearly whether it falls under sub-clause (e) of section 76 (2); and, if so, whether any enhancement of rent is being paid for the original improvement, and, if so, how much.

17. Nothing hereinbefore contained shall preclude the officer receiving the application from holding a local inquiry in person, and from ordering the improvement to be registered, or refusing registration in accordance with the result of the inquiry so held.

18. If an order refusing to register an improvement is passed by an officer lower in rank than the Collector of the district, such order shall not take effect until confirmed by the Collector of the district.

19. *Section 81 (1).*—Evidence relating to any improvement under sub-section (1) of section 81 shall be recorded by the Revenue-officer specified in rule 13, who shall exercise the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of sections 182 and 184 of the Code of Civil Procedure.

CHAPTER IV.—RECORD OF PROPRIETORS' PRIVATE LANDS.

20. *Section 118.*—Applications under section 118 may be made to the Collector of the district, or to the officer in charge of the sub-division in which the land in question is situated, or to any Assistant or Deputy Collector specially empowered by Government to receive such applications. If the application is made to the Collector of the district, he may transfer it for disposal to any officer empowered by Government to receive it.

21. The application shall be signed by the party making it, and shall contain the following particulars, so far as the applicant is able to furnish them :—

- (a) the name, tauzi number, and Government revenue of the estate ;
- (b) the names of the registered proprietors, and the share held by each ;

- (c) the specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known ;
- (d) the names of the tenants (if any) in occupation of each such plot ; and
- (e) the grounds of the application.

22. On receipt of the application the officer shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings.

23. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the officer shall order the lands to be measured and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition cases, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

CHAPTER V.—SERVICE OF NOTICES.

24. *Sections 12, 13, 15, and 18.*—Notices under sections 12, 13, 15 and 18 shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I (Forms 2 to 7).

Board's Instructions.

Notices received by the Collector from the Registering Officers or from the Civil Courts will be accompanied by *chalan*s (either the originals or the duplicates), and when issuing notices to the landlords, the Collector should see that they always bear the number of the Treasury *chalan* with which the fees are deposited.

25 (a). Where there is a sole landlord, or where two or more persons are joint-landlords, and have a common agent such as is referred to in section 188, or a common manager appointed under section 95, the notices shall be served on such sole landlord or his agent, or on such common agent or manager, as the case may be.

(b) Where there is more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint-landlord.

26. In each case under the preceding rule the notice shall be forwarded by post, in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898) and an acknowledgement obtained.

27. In the cases mentioned in rule 25 (a), the landlord's fee shall be transmitted by money-order to the sole landlord or his agent, or to the

common agent or manager, as the case may be, at the time when the notice is issued. The coupon attached to the money-order shall contain, so far as may be possible, the particulars given in the forms contained in Schedule 1.

28. If, in cases where the amount of landlord's fee is transmitted by money-order, the sole landlord or his agent or the common agent or manager refuses to accept payment thereof, and, in all other cases where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice and on the expiry of that time it shall be forfeited to the Government.

Board's Instructions.

Instead of making separate application for refund in the case of a cash deposit, the landlord, when there is more than one deposit relating to the same month, may in one petition apply for payment of items up to the limit of twenty.

The petition should, however, bear the Court-fee stamp* that would have been levied for as many separate applications as the number of items covered by the single petition.

The landlord is required to file, with the application for refund, the notices served upon him by the Collector appertaining to the items to be refunded.

29. The Collector or any other officer who signs the order for the notice to be served shall satisfy himself that the landlord's fee and other fees and charges realised in cash have been paid into the treasury. (1)

29 A. When the tenancy is held under a single landlord, or under two or more landlords having one common agent or a common manager such as is referred to in rule 25(a), the process fee to be paid under sub-sec. (2) of section 12, shall be 12 annas, inclusive of the cost of posting the notice referred to in sub-sec. (3) of section 12, of registering it under the Indian Post Office Act, 1898, and of obtaining an acknowledgment of its receipt.

*Applications or claims for the refund of landlord's fees held in deposit are liable to court-fee, under both clauses (a) and (b) of Article 1 of Schedule 11 of the Court-fees Act, of one anna when the amount claimed is less than Rs. 50 and of eight annas in other cases. When, however, the amount claimed does not exceed Rs. 25, and the application is made within three months of the date of the deposit, under Government of India's Notification No. 849, dated the 16th February 1883, published on page 122 of the *Gazette of India* of the 17th idem, no court-fee is required—*vide* Board's Circular Order No. 2 of June 1894.

(1). Section 45 of the Act has been repealed. The rule for the service under sec. 45 was as follows:—

Section 45.—Notice to a ryot to quit under this section shall be served through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, and shall be subject to the same process fee.

When the tenancy is held under two or more landlords not having one common agent or common manager, the said process fee of annas 12 shall be paid in respect of the original notice in form 3, and a further process fee of four annas shall be paid in respect of each landlord or group of landlords having a common agent or a common manager on whom the service of a special notice is required by rule 25(b).

30. *Section 46 (2)*.—The agreement under sub-section (2) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of summons on defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

31. *Section 46 (4)*.—The notice under sub-section (4) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process fee prescribed by the High Court.

32. *Section 63 (2)*.—In cases (a), (b) and (d) of section 61 referred to in sub-section (2) of section 63, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

33. *Section 72 (2)*.—The general notice referred to in sub-section (2) of section 72 may be published by the transferee by fixing up a written notice to the tenants in the village office or in the presence of not less than two persons in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum, in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice as hereinbefore prescribed on payment of the process-fee prescribed by the High Court.

34. *Section 73*.—Notice under section 73 shall be in writing and shall be delivered to the landlord or his agent, or, where two or more persons are joint-landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54. When there are two or more joint landlords without a common agent or manager the notice shall be served at the village office of the principal co-sharer or at such other places as may be

appointed by each of the landlords for payments of rent under sub-section (2) of section 54.

35. The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

36. *Section 86 (2) and (4).*—If the raiyat elects to proceed under sub-section (2) of section 86, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under sub-section 4 of the said section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court.

37. *Section 87.*—A notice of the tenant's abandonment of his holding under sub-section (2) of section 87 shall be in the form (Form 8) contained in Schedule I, and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling-house, or tree, or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

38. *Section 155.*—Notice to the tenant under section 155 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

38A. *Section 176.*—The fee to be paid for notifying an incumbrance to the landlord shall be the sum required for serving on the landlord a copy of the instrument creating the incumbrance, such copy shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure.

39. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible, contain the particulars specified in the form (Form 9) in Schedule I. The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose.

CHAPTER VI.—THE PROCEDURE TO BE FOLLOWED BY REVENUE-OFFICERS IN REGARD TO THE RECORD-OF-RIGHTS AND SETTLEMENT.

40. (a) Every Revenue-officer appointed by the Local Government under the designation of "Settlement Officer" or "Assistant Settlement

Officer" for the purpose of making surveys, records-of-right, settlement of rents, determination of proprietor's private lands and such like proceedings, or any one or more of them, under the Bengal Tenancy Act, 1885, is hereby vested with—

- (i) all the powers exercisable by a Civil Court in the trial of suits ;
- (ii) powers to enter upon any land and to survey, demarcate and make a map of the same ;
- (iii) all the powers of an Assistant Superintendent of Survey and a Deputy Collector under the Bengal Survey Act, 1875 ; and
- (iv) power to cut and thresh the crops on any land and weigh the produce with a view to estimating the capabilities of the soil.

(b) A Revenue-officer who, under the designation of "Settlement Officer," has been appointed by the Local Government for the purpose of making a survey and record-of-rights and settlement of rents under Chapter X of the Bengal Tenancy Act, 1885, shall have power by general or special order to make over for disposal to any officer subordinate to him (who has been duly empowered, under the designation of Assistant Settlement Officer, to act as a Revenue-officer under the provisions of the same Chapter of the same Act),—

- (i) objections preferred under section 103A,
- (ii) the settlement of fair rents (including the preparation of a table of rates),
- (iii) the preparation of a Settlement Rent Roll, under Chapter X, Part II, of the Act, in any area,
- (iv) applications for the settlement of fair rents under section 105,
- (v) suits instituted for the trial of disputes under section 106, and
- (vi) applications for the commutation of rents under section 40.

(c) A Revenue-officer so appointed under the designation of Settlement Officer shall, on the application of any person interested and after giving notice to other persons interested, and hearing any objections preferred, or of his own motion without giving such notice, have power to withdraw, from the file of any Assistant Settlement Officer subordinate to him, any of the matters specified in rule 40 (b) above, and to dispose of them himself, or to transfer them for disposal to any other Assistant Settlement Officer subordinate to him who has been duly empowered to act as a Revenue-officer.

(d) On the application of either party to a suit under section 106, after giving notice to the other party and hearing any objections preferred, or of his own motion without giving such notice, a Revenue-officer so appointed under the designation of Settlement Officer may transfer to such competent Civil Court as the District Judge may designate, the trial of a suit or of any class of suits instituted for the decision of a dispute or

disputes which involve important and complicated questions of right and title or claims to be put in possession.

(e) In the case of an uninhabited village, any general notice to be served or publication to be made under the rules in this Chapter may be served or made in any inhabited village contiguous to that village, or if there be no inhabited village contiguous to that village, in the inhabited village nearest to that village or in the village in which the tenants and occupants of the lands of the uninhabited village are believed by the Revenue-officer to reside.

41. Deputy Superintendents of Survey and Assistant Superintendents of Survey employed in operations under these rules are hereby declared to be Revenue-officers for the purpose of performing any duty imposed upon them by these rules, or by instructions consistent with these rules, issued by the Board of Revenue. They are hereby vested with the powers specified in section 189 (1) (b), provided that an Assistant Superintendent shall not exercise the powers vested in a Superintendent under the Bengal Survey Act, 1875 (Ben. Act V of 1875).

*Procedure for Cadastral Survey, Records-of-rights and
Settlements of Rents.*

42. The processes shall be—

A.—Demarcation of boundaries.

B.—Measurement.

C.—Khanapuri, *i. e.*, preliminary preparation of the record.

D.—Attestation of the record.

E.—Publication of the draft record.

F.—Disposal of objections under section 103A.

G.—Settlement of fair rents in cases in which a settlement of revenue is being, or is about to be made.

H.—Final publication of the record-of-rights.

I.—Distribution of copies of the record-of-rights to parties interested.

J.—The settlement of fair rents on the application of the parties under section 105, and the trial of suits for the decision of disputes under section 106, in cases in which a settlement of revenue is not being or is not about to be made.

K.—Correction of *bona fide* omissions or mistakes in the record-of-rights.

A.—Demarcation of Boundaries.

43. (a) In the demarcation of village boundaries, the area contained within the exterior boundaries of the village maps of the revenue survey shall be preserved, as far as possible, as the unit of survey and record.

(b) Where there is no dispute, the boundary of the village according to possession shall be followed for the purposes of map and record.

(c) Where there is a dispute as to a village boundary, the Revenue-officer shall decide the dispute under the Bengal Survey Act, 1875 (Ben. Act V of 1875).

(d) Where the Settlement Officer is of opinion that the village maps prepared at the Revenue Survey are not suitable as the unit of survey and record, he shall issue notice of the inquiry to all parties concerned in the manner prescribed, and after such local inquiry in the presence of the parties as he may consider necessary, shall determine the area to be included in the village. He shall then submit his proceeding to the Board through such superior authorities as the Board may prescribe; and such area as the Board may, after such further inquiry as may be deemed necessary, declare to be included in a village shall be adopted as the unit of survey and record-of-rights:

Board's Instructions.

The Settlement Officer's report should be submitted through the Collector of the district to the Director of Land Records, Bengal, who will forward through the Commissioner of the Division to the Board. The Collector should report in each case whether the proposed change would be suitable for administrative purposes.

Provided that in all cases where the Revenue Survey village is not adopted as the unit of survey, the Settlement Officer shall draw up a statement, in such form as the Board may prescribe, showing the areas adopted as the unit of survey as compared with the areas contained in the village maps of the Revenue Survey; and such statement shall be filed in the Collector's Office.

Board's Instructions.

The following form is prescribed by the Board.—

Name of Thana

ACCORDING TO REVENUE SURVEY OF 18 .			VILLAGES ADOPTED UNDER RULE 43(d).				
Name of mauza.	Revenue Survey number.	Area in acres according to Revenue Survey.	Name of village.	Thana Number.	Names of tolas comprised in village.	Area in acres.	REMARKS.
1	2	3	4	5	6	7	8

(e) Where no Revenue Survey maps have been prepared, the Revenue-officer appointed under the designation of the Settlement Officer shall issue notice to all parties concerned in the manner prescribed, and after such local inquiry in the presence of the parties as he may consider necessary, shall determine the area to be included in the village. He shall then submit his proceedings to the Collector, and such area as the Collector, after such further inquiry as he deems necessary, and with the sanction of the Board of Revenue, by general or special order, declares to constitute a village shall be adopted as the unit of survey and record-of-rights.

(f) In cases where the procedure prescribed in sub-clauses (d) and (e) have been adopted, the Board of Revenue shall submit a report to Government for issue of the notification prescribed by section 3 (10) (b) of the Bengal Tenancy Act.

(g) The notice under rule 43 (d) and (e) of the inquiry to be held shall be given by proclamation and beat of drum and by posting it in the presence of not less than two persons in some convenient place or places in the lands to which it refers.

44. Boundary pillars of a permanent nature shall be erected at every point where the boundaries of three or more villages meet, and may be erected wherever the Revenue-officer considers it necessary to define by pillars the boundaries of estates, or tenures or of lands which have been the subject of dispute.

B.—Measurement.

45. A field map of every village shall be prepared. It shall show the boundaries of every field separately held, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may lay down.

Board's Instructions.

The instructions of the Board are contained in rule 30, Chapter 6, Part II, of the Survey and Settlements Manual, 1909.

C. Khanapuri, i. e., Preliminary Preparation of the Record.

46. The following are the principal documents to be prepared in the course of a survey and the preparation of a record-of-rights under Chapter X of the Bengal Tenancy Act, 1885 :—

Village map.	Khewat.
Khasra.	Khatian.
Parcha.	Terij.

These and any other papers prescribed by the Board of Revenue shall be prepared in such manner as the Board may prescribe.

Board's Instructions.

General instructions have been given in Part II of the Survey and Settlement Manual, 1900, but special instructions in particular settlements may be issued with the approval of the Board.

47. The record-of-rights, which shall be published under section 103A of the Bengal Tenancy Act, 1885, shall be contained in the khewat and the khatian and such other papers as may be specified by general or special order of the Board of Revenue in the case of any local area.

48. (a) The proprietary khewat shall show the character and extent of proprietary interests. It shall be first drawn up with reference to the registers maintained by the Collector under the provisions of the Land Registration Act, 1876 (Ben. Act VII of 1876). As the record-writing proceeds, the proprietary khewat shall be altered in accordance with the facts of possession. The Settlement Officer shall, from time to time, under such instructions as the Board of Revenue may prescribe in this behalf, give information to the Collector of all alterations made in the khewat, and the Collector shall thereupon take action to make such corrections as may be necessary in his registers prepared under the Land Registration Act. If the Collector, after inquiry under the Land Registration Act, finds that any entry in the khewat is incorrect, a note shall be made in the khewat of his finding.

Board's Instructions.

The instructions have been incorporated in rule 13 of Chapter 8, Part II, of the Survey and Settlement Manual, 1900.

(b) A khewat shall ordinarily be prepared to show the character and extent of the interest of tenure-holders, such of their interests as are of a raiyati nature being also recorded in the khatian.

49. (a) The khatian shall show in detail for all the lands of the village, estate by estate, landlord by landlord, tenant by tenant, and occupant by occupant, the lands included in each estate owned by each landlord, and occupied by each tenant or occupant, with particulars of rent and area and of the incidents of each tenancy.

(b) Lands cultivated or otherwise held direct by the proprietor shall be shown in detail in the khatian, and shall be entered either as proprietor's private land, within the meaning of section 120 of the Bengal Tenancy Act, or as land held by the proprietor, but not private land within the meaning of that section.

D.—Attestation of the Record.

50. (a) When the map, khasra, khewat, and khatian for a village have been prepared in the manner prescribed by these rules and by

instructions of the Board of Revenue consistent with them, the Revenue-officer shall issue a notification in the form, (Form 10) given in Schedule 1, fixing a day which shall be not less than a week from the date of publication of the notification, on which he will be present at some place to be specified at or near the village, for the purpose of attesting and completing the record-of-rights.

Board's Instructions.

The usual practice should be to allow one month's interval between the date of issue of the notification and the commencement of attestation.

(b) The notification shall further state that on the day so fixed, or on any other day to which the proceedings may be adjourned, the Revenue-officer will record rents and status and deal with objections relating to entries in the record or omissions therefrom; and it shall require all parties interested in the subject matter of the inquiry to attend at the time and place specified, with their parchas, and with such evidence as they have to offer in connection with the proceedings.

(c) Such notification shall be published by proclamation and beat of drum, and fixed up, in the presence of not less than two persons, in some conspicuous place in the village to which it refers.

51. The Revenue-officer may also, if he deems fit, take such additional measures under the powers conferred on him by rule 40, as he may deem desirable to procure the attendance, at the place specified in the notification issued under the last preceding rule, of the occupants, under-riyats, riyats, tenure-holders, landlords and proprietors, or their authorised agents.

52. On the date specified in the notification issued under rule 50, or on any other date to which the proceedings may be adjourned, the entries which have been made in the khewat and in each khatian shall be read out in the presence of such of the interested parties as are in attendance.

If the correctness of any entry is questioned, the Revenue-officer shall dispose of the objection after local inquiry or otherwise :

Provided that if the correctness of the measurement be objected to, and a fresh measurement be demanded, the Revenue-officer may require the cost of the re-measurement to be deposited.

If the measurement shows the original measurement to have been inaccurate, the amount deposited, or any portion of it, may, if the Revenue-officer thinks fit, be refunded to the objector.

53. The Revenue-officer shall ascertain what tenants claim the right to hold at fixed rates or fixed rents, explaining, as far as may be necessary, the provisions of the Bengal Tenancy Act, 1885, in this respect. If

the right claimed is disputed by the landlord, the Revenue-officer shall call on the claimants for proofs of such right. It is sufficient for the claimant to establish the presumption mentioned in section 50 (2), and if that presumption be not rebutted by the landlord, the claimant shall be recorded as a raiyat at fixed rates of rent, or a fixed rent, as the case may be.

54. The Revenue-officer shall ascertain which of the raiyats are settled raiyats, or occupancy raiyats, as the case may be, and shall record them as such, having regard to the presumption of section 20 (7) of the Bengal Tenancy Act, 1885.

55. The Revenue-officer shall ascertain what raiyats are non-occupancy, and to this end he shall be entitled to call upon the landlord or his agent to produce a statement showing the names of the raiyats alleged by him to be non-occupancy raiyats. On the production of such statement, the Revenue-officer shall explain to the raiyats whose names are entered in the statement, and who have not already been recorded as occupancy or settled raiyats, the nature of the presumption raised by section 20 (7) of the Bengal Tenancy Act, 1885. If after such explanation, a raiyat admits himself to be a non-occupancy raiyat, he shall be recorded as such. If he does not admit himself to be a non-occupancy raiyat, the Revenue-officer shall call on the landlord to prove the allegation made by him in regard to such raiyat.

56. Abwabs shall not be recorded. Cesses which are authorised by law shall be recorded separately from the rent in the khatian or in the case of tenure-holders, in the khewat.

57. The Revenue-officer shall summarily ascertain the rent at present payable by the tenant, and record it in the appropriate column of the khatian as the rent payable in respect of the land held by the tenant.

58. If while the record is being prepared, the landlord and tenant agree as to the rent, which shall be recorded as payable, the Revenue-officer, if he has been vested with powers under section 109C of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907, may, if he is satisfied that the rent agreed upon is fair and equitable but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under the Bengal Tenancy Act.

59. If the Revenue-officer has not been vested with powers under section 109C, he may, if he considers that the provisions of that section should be applied in respect of the rent of any tenure or holding, submit a report to any Revenue-officer, who has been vested with powers under section 109C in the local area for which the record-of-rights is being prepared : and such Revenue-officer after giving notice to the landlord and tenant, and after such further inquiry as he may deem necessary,

61. When the record-of-rights has been prepared and attested in the manner prescribed in Rules 50 to 57, and when the record shall have been arranged and corrected in accordance with the orders which the Revenue-officer may have passed, he shall record a proceeding in which he shall state that attestation of the records of the village has been completed, and shall then cause the draft record-of rights to be published, in the village in the manner provided in Rule 62

E—Publication of the Draft Record.

62(a). As soon as the record-of-rights has been prepared and attested, a notice in Form 11 in Schedule I shall be posted up at the landlord's office in the village and in the presence of not less than two persons, in some other conspicuous place in the village, or where the village is uninhabited, in the village in which most of the cultivators of the uninhabited village reside, stating that the draft of the record will be published in the village on a day to be specified, not less than a week from the date of the posting of such notice, and calling on all persons interested to attend on the date so specified :

Provided that the draft of the record shall not be published until the proceeding under Rules 61 has been recorded.

(b) On the date fixed for the publication of the draft record, the Revenue-officer shall either proceed to the village himself and read the contents of the record in the presence of the parties who attend, or he shall depute an officer, who shall read out the contents of the record in the presence of as many of the parties as attend, and the Revenue-officer or the officer deputed by him, as the case may be, shall at the same time inform the parties who attend that the Draft Record will be open for inspection for not less than one month in the office of the Revenue-officer, or in such other convenient place as the Revenue-officer may determine.

Any objection which may be made to any entry during the period named, shall be received and considered by the Revenue-officer. Objections shall, as far as practicable, be made in Form 12 given in Schedule I.

Board's Instructions.

In the case of large settlements, or when a large estate is concerned the Revenue-officer shall ordinarily allow the draft record to remain open to inspection for a longer period than one month, and should receive and consider objections preferred within such period.

F--Disposal of Objections under section 103A.

63. When an objection is made within and before the expiry of the period of publication of the Draft Record prescribed under Rule 62 (b)

regarding the correctness of an entry, or as to the propriety of any omission, notice of the objection in Form 13 Schedule I shall be served on all persons whose interest may, in the opinion of the Revenue-officer, be affected thereby, and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection.

If no person attends to contest the objection, and the Revenue-officer is satisfied that the notice of the objection has been duly served on all persons interested, the objection may be allowed and the record amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection.

All such objections shall be dealt with summarily under such instructions as the Board of Revenue may prescribe.

Board's Instructions.

These instructions are contained in rule 2 of Chapter 5, Part III, of the Survey and Settlement Manual, 1900.

G.—Settlement of fair Rents in cases in which a Settlement of Revenue is being, or is about to be, made.

64. If it does not appear to the Revenue-officer expedient to settle the rents of tenants of every class in an estate or tenure belonging to the Government, the Revenue-officer shall submit a report for the orders of the Government under the proviso to section 104 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907.

65. In the case of a settlement of fair rents under Part II of Chapter X of the Bengal Tenancy Act, 1885, when a settlement of revenue is being, or is about to be made, the Revenue-officer shall serve a notice by proclamation and beat of drum, and by posting it, in the presence of not less than two persons, in some conspicuous place in the village comprising the lands under settlement.

The notice shall be in Form 14 in Schedule I and shall set forth that on a date named and at a place named, the Revenue-officer will settle fair rents in respect of all estates, tenures or holdings, and for unsettled lands included in such village. A schedule may, when the Revenue-officer thinks fit, be appended to the notice, giving such particulars as he may think necessary relating to the names and numbers of all estates, tenures, and holdings paying revenue or rent to Government, and of unsettled lands for which rent will be settled. Such notice shall be served at least one week previous to the date fixed for settlement of fair rents. When such notice has been served it shall be held that all persons have, subject to the provisions of Rule 73, been sufficiently warned of the date fixed :

Provided that in cases in which a table of rates is prepared under the provisions of section 104B, the notice shall not be published until the table of rates has been confirmed under sub-section (5) of that section.

66. A table of rates shall not ordinarily be prepared when it is found that the tenants of the local area in question hold their lands at lump rentals, and no rates actually exist, or when the rates are so numerous and varied, and are so little dependent on the class of soil, that no table of existing rates can be prepared. When the above conditions do not obtain, and it is possible to prepare a table of existing rates which are generally of a uniform character and in accordance with certain ascertainable classes of soil, a table of rates may be prepared in accordance with the provisions of section 104A (c) :

Provided that when the Revenue-officer is of opinion, for reasons to be recorded by him in writing, and submitted to, and approved by, the authority empowered to confirm the table of rates, that the rents stated as the existing rents by the landlord and tenants are not the rents that are legally payable, and that it is impossible to ascertain those rents, a table of rates fairly and equitably payable may be prepared and shall be based on the rates or rents payable in those neighbouring villages, the lands of which are fairly comparable with the lands of the village.

67. When the Revenue-officer has decided to settle rents in any local area on the basis of a table of rates, under section 104A (c), he shall first prepare a table of existing rates and shall then either maintain those rates or shall proceed to enhance or reduce them, having regard to the general principles laid down in the Bengal Tenancy Act, 1885, for the enhancement or reduction of rents and especially to section 30 (b), (c) and (d).

68. The table of rates finally prepared by the Revenue-officer and published by him under section 104B (2), shall contain the particulars noted in section 104B (1) and shall show :—

- (a) the classes of land as locally known, that have been adopted in the fixation of rates ;
- (b) the area, expressed in local measure, for which each rate is fixed ;
- (c) the existing rates, if any, taken as the basis of the table of rates ; and
- (d) the rates fixed as fairly and equitably payable for that area of land of each class of land for each class of tenant whose rent is liable to alteration.

69. (a) When a table of rates has been prepared under section 104B a notice in Form 15 in Schedule I shall be posted up in the landlord's office in the village or in the presence of not less than two persons in some conspicuous place in the village, stating that the table of rates will

be published in the village on a day to be specified, not less than a week from the date of the posting of such notice, and calling on all persons interested to attend on the date so specified.

(b) On the date fixed for the publication of the table of rates the Revenue-officer shall proceed to the village and shall explain to so many of the parties as attend, the proposed rates and the grounds on which they are based, and shall hear and consider any objections that may be raised to any entries in the table. He shall at the same time inform the parties who attend that the table of rates will be open to inspection for not less than one month in the office of the Revenue-officer, or in such other convenient place as the Revenue-officer may determine, and that any person who objects to any entry in the table of rates may present a petition to him on the subject, within one month of the date of the publication of the table of rates, which will be duly considered under section 104B (3).

70. The Revenue-officer shall record the grounds of his final order in every case in which he disposes of an objection to a table of rates under section 104B (4).

71. In submitting his proceedings to the confirming authority under section 104B (4), the Revenue-officer shall describe the land classification adopted by him for the purposes of his table of rates, and shall show in tabular form the rates which were found by him to exist for the classes of land described, and the rates he proposes to substitute for the existing rates, explaining in each case his grounds for maintaining, enhancing or reducing the rates.

72. (a) The following Revenue Authorities are empowered under section 104B (4) to confirm tables of rates prepared under the Bengal Tenancy Act :—

- (i) when the total rents to which the table of rates is to be applied will not, in the opinion of the Revenue-officer, exceed Rs. 1,000, the Collector of the District ;
- (ii) when the total rents in question will, in the opinion of the Revenue-officer, exceed Rs. 1,000, but will not exceed Rs. 5,000 the Commissioner of the Division ; and
- (iii) when the total rents in question will, in the opinion of Revenue-officer, exceed Rs. 5,000, the Board of Revenue.

(b) The following Revenue Authorities are empowered, under section 104B (4), to confirm Settlement Rent Rolls prepared under the Bengal Tenancy Act :—

- (i) in all cases in which the Settlement Rent Roll has been prepared by an Assistant Settlement Officer, and the Settlement Officer is of the rank of a Collector, the Settlement Officer ; and

- (ii) in all other cases the Collector or other Revenue Authority to whom the Settlement Officer is declared by the Board of Revenue to be immediately subordinate.

73. On the date fixed in the notice issued under rule 65 above, or on any subsequent date to which the proceedings may be adjourned, the Revenue-officer shall read, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall proceed to settle a fair rent for every such tenant under the provisions of section 104 A (1) (a), (b), (d) or section 104C :

Provided that when a Revenue-officer proposes to alter an existing rent, and the parties have not attended in compliance with the general notice prescribed in rule 65 above, the Revenue-officer shall serve each person interested with a special notice, and the fair rent shall not be settled in the absence of such person until after due service of such special notice has been proved.

74. The Settlement Rent Roll shall contain the particulars prescribed in section 104A (2), and the fair rent settled for each tenant shall be entered in it by the Revenue-officer himself at the time that such rent is settled.

75. As soon as the Settlement Rent Roll has been prepared, it shall be published by a notice in Form 16 in Schedule I in the manner prescribed for the publication of the Draft Record in rule 62, and the Revenue-officer, or the officer deputed by him to read out the contents of the Settlement Rent-Roll, as the case may be, shall at the same time inform the parties who attend that the Settlement Rent Roll will be open to inspection for not less than one month in the office of the Revenue-officer, or in such other convenient place as the Revenue-officer may determine, and that any person who objects to any entry in the Settlement Rent Roll or omission therefrom may present a petition to the Revenue-officer on the subject within one month of the date of the publication of the Settlement Rent Roll, which will be duly considered under section 104E.

76. All objections presented under rule 69 or rule 75 shall be dealt with in accordance with the provisions of rule 63, in the same way as objections presented under section 103A. An appeal presented under section 104G (1) shall lie to the officer to whom the Revenue-officer who has passed the order appealed against is immediately subordinate :

Provided that a second appeal shall lie from any order on appeal settling the amount of a fair rent passed by a Settlement Officer or Collector under this rule to the Commissioner of the Division, and that, when the proposed annual rental of any tenancy exceeds 100 rupees

per annum, a final appeal shall, in all such cases, lie to the Board of Revenue.

77. As soon as the Settlement Rent Roll has been sanctioned by the Confirming Authority, it shall be incorporated in the record-of-rights by the entry of the fair rents settled in a column of the khatian to be set apart for that purpose.

78. Rules 65 to 77 (both inclusive) shall apply, so far as may be, to a settlement of rents under section 112 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907.

H.—Final publication of the Record-of-rights.

79. When all objections under section 103A have been disposed of as provided for in rule 63 above, and, in cases in which a settlement of revenue is being, or is about to be made, the Settlement Rent Roll has been incorporated in the record-of-rights, as provided in rule 77, and the Revenue-officer has corrected the Draft Record in accordance with the orders passed by him on such objections or in the course of the preparation of the Settlement Rent Roll, he shall finally frame the record and cause it to be published by notifying, in the form shown in Form 17 in Schedule I, that its contents will be read out in the village, and, when the village is uninhabited in the village in which most of the cultivators of the uninhabited village reside, on a date to be specified, not less than a week from the date of the publication of such notice, and by reading it out himself or causing it to be read in the village on the date so specified, in the manner prescribed in rule 62, in the presence of the parties or of as many of them as attend.

80. When all the records-of-rights in any local area have been finally published, the Revenue-officer shall submit a report to the Local Government, containing such particulars as may be necessary in order to enable the Local Government to issue a notification under sub-section (2 of section 103B of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907.

I.—Distribution of copies of the Record-of-rights to parties interested.

81. (a) The Revenue-officer shall cause to be made a copy of, or extract from the record-of-rights as finally published in accordance with rule 79 and this copy or extract shall bear a certificate, under the Revenue-officer's signature and seal, that it is a copy of, or extract from, the record-of-rights as finally published. The copy or extract shall be made over to the landlord concerned, or where there are more landlords than one, to their common agent or common manager, as the case may be, or if there be no common agent or common manager, to such person among the landlords as the Revenue-officer may think fit.

(b) The finally published record itself shall be made over to the Collector of the district, and shall bear a certificate that it is the finally published record, under the Revenue-officer's signature and seal.

(c) An extract from the record-of-rights as finally published under rule 79 relating to his tenancy shall be given to every tenant under the signature and seal of the Revenue-officer and shall bear a certificate that it is an extract from the record-of-rights as finally published.

(d) Copies of records, or of extracts from them, supplied to landlords and tenants under this rule shall be given free or on payment according as in the case of each local area the Local Government may direct. When payment is required, the sums so recovered shall be adjusted against the expenses incurred on account of survey and settlement.

(e) If the Local Government so directs, copies of the maps shall be prepared and distributed to the landlords and tenants concerned, and in such a case the foregoing rule regarding copies of or extracts from, the record shall apply to such copies of the maps.

J.— The settlement of fair rents on the application of the parties under section 105, and the trial of suits for the decision of disputes under section 106 in cases in which a settlement of revenue is not being, or is not about to be made.

82. When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and subject to the directions contained in rules 84 to 87 of this Chapter, the Revenue-officer shall adopt, as far as it is applicable, the procedure laid down in the Code of Civil Procedure for the trial of suits.

83. When the estate or tenure is managed by the Court of Wards or by a manager appointed by the District Judge under section 95 of the Act and a settlement of revenue is not being, or is not about to be made, the procedure laid down in these rules for recording or settling rents shall be followed, the manager of the estate or the tenure being regarded as the landlord.

84. When a landlord or tenant applies for the settlement of a fair rent notice in Form 18 Schedule I shall be served on every person interested in the application together with a copy of the application, or extract therefrom, or summary thereof, so far as the application concerns such person.

Board's Instructions.

If only one person is interested in the application, a copy should be served on him: if more than one, an extract containing such particulars as concern him shall ordinarily be served upon each person. If a

summary only is given, the Revenue-officer should satisfy himself that such summary contains all that is material for the parties interested to be informed of.

85. With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord whose interest is recorded in the same khewat entry in the same village may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord :

Provided that if at any time it appears to the Revenue-officer that the question between any two of the parties of whom one is so joined with others cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, for the joint or separate disposal of the application as he may think fit.

86. (a) On the date fixed for the settlement of fair rents, or any subsequent date to which, the proceedings may be adjourned, the Revenue-officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of section 105.

(b) Where a landlord or a tenant does not attend, after due service of notice has been proved, the procedure may be *ex parte*.

(c) Where a landlord or tenant appears and the fair rent is not settled under sub-section (5) or sub-section (6) of section 105, that is, by the acceptance by the parties of a rent proposed by the Revenue-officer, or compromise, the Revenue-officer shall record evidence in the manner prescribed in clause (f) of section 148 of the Bengal Tenancy Act, 1885, for the trial of rent-suits, and shall settle a fair and equitable rent according to law :

Provided that in important cases the Revenue-officer may, in his discretion, record evidence at length.

(d) When a fair rent has been settled under these rules, it shall be entered in the khatian as the rent payable in respect of the holding from the date prescribed by section 110.

87. It shall not be necessary for a Revenue-officer to draw up a separate decree with regard to the fair rent settled ; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

88. Proceedings under sections 105A and 106 of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907, shall be dealt with in all respects as suits between the parties.

K.— Correction of bon-fide omissions or mistakes in the record-of-rights.

89. Applications for the correction of *bon-fide* omissions or mistakes in the record-of-rights after its final publication under Rule 79, where such applications bear on the body of them the admission of the party or parties affected, shall be received and dealt with in accordance with the provisions of section 108A. If the Revenue-officer receiving the application has not been specially empowered under that section, he shall forward the application, for disposal, with his report thereon, to the Revenue-officer so empowered. The Court-fee payable on such applications shall be eight annas.

Final Reports.

90. The local Government may, if it thinks fit, direct that a final report be written, in English, for each village and each local area under survey.

The report for the village shall show :—

- (a) the number of tenants of each class, with the area held and rental paid by them ;
- (b) the area and classification of the village lands ;
- (c) the rental before settlement, and according to settlement, and the number of fair rents settled, with explanation of increase or decrease ;
- (d) when settlement of land-revenue is being made, the amount of Government revenue before and after re-settlement, grounds of assessment and comparison of gross assets with new assessment ;
- (e) the rates of rent prevailing before settlement, and the rates settled if any ;
- (f) proximity to markets, and facilities for irrigation ;
- (g) village customs, including customs as to payment of village officials ;
- (h) arrangements made for maintenance of records ; and
- (i) other matters deserving of notice which have been excluded from the record-of-rights.

The report for the whole area under survey shall contain the following particulars:—

- (i).—General description of the tract.
- (ii).—Its fiscal history.
- (iii).—Statistical results.
- (iv).—Comparison of condition of the tract as regards rentals before and after survey.

(v).—Financial results, including approximate division of expenses under the heads—

- (a) survey,
- (b) record-of-rights, and
- (c) preparation and distribution of records.

Board's Instructions.

The Report should also show the custom regarding the transferability or otherwise of occupancy rights. Mention should also be made of any illegal *abwabs* which have been found to be in existence before the preparation of the record-of-rights, but which were struck off.

Applications under section 103 for Survey and Record-of-Rights.

91. These applications shall be made to the Collector of the district.

92. The application shall specify—

- (a) the status of the applicant, viz., whether he is a proprietor or a tenure-holder ;
- (b) the particulars specified in section 102, of the Bengal Tenancy Act, in respect of which the application is made ; and
- (c) the number of tenants occupying the estate or tenure or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application (so far as the applicant is able to give these particulars).

93. (a) If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Bengal Act VII of 1876.

(b) If the application is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.

94. On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary.

95. The Commissioner may call for further information or may require the application to be amended.

96. If the Commissioner considers that the application cannot be granted with advantage to the interests of all persons concerned, he may reject it. If he approves it, he shall forward the application with an expression of his opinion for the orders of the Board of Revenue.

97. A Commissioner rejecting an application shall record his reason for doing so, and the applicant if dissatisfied with the order, may appeal within one month to the Board of Revenue.

98. When an application is referred to the Board under rule 96, or an appeal is preferred under rule 97, the Board may call for further information, if necessary, and shall pass such orders as it may think fit for allowing or rejecting the application.

99. As soon as an application is allowed, the Collector shall call upon the applicant to deposit eight annas *per* acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed. If the Collector is unable to estimate the area, he shall require a deposit at the rate of Rs. 2 for each tenant. If the amount does not exceed Rs. 500, the applicant must deposit the whole amount in advance. If it exceeds Rs. 500, the applicant shall deposit the sum of Rs. 500 and shall give such security as the Collector may require for the payment of the balance of the deposit in such instalments as the Collector may from time to time demand.

If the amount deposited as above proves more than sufficient to cover the cost of the proceedings, the unexpended balance will be refunded on their termination.

If the amount deposited proves insufficient to cover the cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so, the proceedings may be stopped and the order allowing the application cancelled.

Board's of Instructions.

The Collector should report such cases to the Commissioner, who will pass the final order cancelling the application.

100. In conducting the operations, the Revenue-officer shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101.

CHAPTER VII.—GENERAL SCALE OF FEES.

101. *Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court [fees for serving which are regulated by the Court Fees Act, 1870 (VII of 1870)], and not being provided for by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

102. Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

103. In addition to the above fee, the actual charge, which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, shall be levied from and paid by the person at whose instance the process

is issued before issue of the process. If a peon carries more than one process involving charges for railway-fare, boat-hire, etc., the sum leviable shall be charged, in equal shares, upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under rule VII of the rules prescribed by the High Court under clause (2) of section 20 of Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

104. If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

105. *Deposits of Rent*—For deposits of rent under section 61 (2), fees shall be levied according to the following scale :—

			Rs.	A.
On any sum not exceeding	...	...	5	1
On any sum exceeding	...	...	5 }	2
but not exceeding	...	...	10 }	
On any sum exceeding	...	...	10 }	4
but not exceeding	...	...	25 }	
On any sum exceeding	...	...	25	4

for each complete sum of Rs. 25, and 4 annas for the remainder, provided that, if the remainder does not exceed Rs. 10, the charge for it shall be only 2 annas :

Provided also that in no case shall the fee exceed the sum of Rs. 5.

106. *Distrain of Crops*—The following scale of charges is prescribed, on account of processes for distraint and sale under Section 134.

(a) in respect of the warrant of distraint—8 annas ;

(b) in respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day ; and

(c) in respect of action taken under clause (2), section 126, for the reaping, storing or preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing floor or store-house, if necessary.

In addition to the charges under clauses (a), (b) and (c) above, railway-fare, boat-hire, and ferry charges may be levied, when necessary, as under rule 103.

SCHEDULE I.

FORM 1.

APPLICATION UNDER SECTION 80 OF ACT VIII OF 1885.

(See Rule, 13.)

To

THE COLLECTOR OF

*The application of _____, son of _____, resident
of _____, for registration of an improvement under
section 80 of the Bengal Tenancy Act, 1885 (VIII of 1885.)*

Name of pargana and estate in which improvement has been effected.	Names of villages in which improvement effected.	Nature of applicant's interest in land improved.	Nature of improvement.	By whom executed and at whose expense.	Cost of improvement.	When executed.	Names of all tenants benefited, in each village.
I	2	3	4	5	6	7	8

A. B.,
Landlord.

FORM 2.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where there is a single landlord or common agent or common manager.)

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of , as required by section $\frac{1}{8}$ of Act VIII of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury ; chalan appended.

C. D.,

Registering Officer.

To

A. B. RESIDENT OF

TAKE notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)], specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs.

is being transmitted to you by postal-money order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's Office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauza Number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferer of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C. D.,

Registering Officer.

ORDERED that this notice be served on the abovenamed landlord.

E. F.,

Collector.

REVERSE OF THE FORM.

Serial number of chalan.	Number of notice.	Name of depositor.	Name of person to whom to be served.	Details of cash receipts with amount.
1	2	3	4	5
				Rs. A. P.

FORM 3.

NOTICE UNDER SECTIONS 12 AND 18 OF ACT VIII OF 1885.

*(See Rule 24.)**(Where there is more than one landlord and no common agent or manager).*

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., residents of , as required by section 13 of Act VIII of 1885. A copy for each joint landlord is herewith forwarded. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. , for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury; chalan appended.

C. D.,
Registering Officer.

To

A. B., &c., RESIDENTS OF

TAKE notice that the transfer of the tenancy which is alleged to be a tenure [or raiyati holding at fixed rates (as the case may be)] as specified below, of which you are stated to be a joint landlord, has been registered, and that the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you, and your co-sharers, or some person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three

years of the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred with village and jagana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of transferee of tenure or raiyati holding at fixed rates.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
								Rs. A. P.	

C. D.,

Registering Officer.

Ordered that this notice be served on the above-named landlords.

E. F.,

Collector.

REVERSE OF THE FORM.

Serial number of chalan.	Number of notice.	Name of depositor.	Name of persons to whom to be served.	Details of cash receipts with amount.
1	2	3	4	5
				Rs. A. P.

FORM 4.

NOTICE UNDER SECTIONS 13 AND 18 OF ACT VIII OF 1885.

(See Rule 24.)

(Where there is a single landlord or common agent or common manager.

In the Court of the of

To

THE COLLECTOR OF

LET this notice be served on A. B., resident of

as

required by section 118 of Act VIII of 1885. The landlord's fee of Rs. , money-order fee of Rs. , and Rs. , for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury ; chalan appended.

C. D.,
Judge.

To

A. B., Resident of

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the the case may be)] the tenancy which is alleged to be a tenure (or raiyati holding at fixed rates) specified below, of which you are alleged to be the landlord, has been confirmed (or made) and that the landlord's fee of Rs. is being transmitted to you by postal money order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application.

If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred with village and pargana in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure or raiyati holding at fixed rates has been sold or foreclosed.	Name, father's name, and residence of purchaser of tenure or raiyati holding at fixed rates.	Date of confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fees.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge.

ORDERED that this notice be served on the abovenamed landlord

E. F.,
Collector.

FORM 5.

NOTICE UNDER SECTIONS 13 AND 18 OF
ACT VIII OF 1885.

(See Rule 24.)

(Where there is more than one landlord and no common agent or manager.)

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A. B., etc., residents of _____ as required by section 13 of Act VIII of 1885. A copy for each joint land-ord is herewith forwarded. The landlord's fee of Rs. _____, money-order fee of Rs. _____ and Rs. _____, for serving the notice by post in a registered cover and obtaining an acknowledgment have been paid into the Treasury ; chalan appended.

C. D.,
Judge.

To

A. B., ETC., RESIDENTS OF

TAKE notice that the sale of [or the decree or order absolute for the foreclosure of mortgage on (as the case may be)] the tenure (or raiyati holding at fixed rates,) specified below, of which you are alleged to be a joint landlord, has been confirmed or made, and the landlord's fee of Rs. will be held in deposit in the Collector's office till applied for by you, and your co-sharers or some other person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application ; or it will be sent by money-order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates transferred with village and pargana in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure or raiyati holding at fixed rates has been sold or foreclosed.	Name, father's name, and residence of purchaser of tenure or raiyati holding at fixed rates.	Date or confirmation of sale or the decree or order absolute for foreclosure.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9
							Rs. A. P.	

C. D.,
Judge.

Ordered that this notice be served on the abovenamed landlords.

E. F.,
Collector

FORM 6.

NOTICE UNDER SECTIONS 15 AND 18 OF
ACT VIII OF 1885.

(See Rule 24).

(Where there is a single landlord or common agent or common manager.)

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., resident of
The landlord's fee of Rs. money-
order fee of Rs. and Rs. for serving the notice by
post in a registered cover and obtaining an acknowledgment are
deposited herewith.

C. D.,
Tenure-holder or raiyat
holding at fixed rates.

To

A. B., RESIDENT OF

TAKE notice that I have succeeded to the tenure [or raiyati holding at fixed rates (as the case may be)], specified below, of which you are the landlord and that the landlord's fee of Rs. is being transmitted to you by postal money-order. If you fail to accept payment of the sum, it will be kept in deposit in the Collector's office for three years from the date of the service of this notice. During this time, it will be paid to you or transferred to your revenue account on application. If it is not claimed by you within three years from the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of late tenure-holder or raiyat holding at fixed rates.	Date, if known, of death of deceased tenure-holder or raiyat holding at fixed rates.	Name, father's name, and residence of successor to tenure or raiyat holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
			Rs.					Rs. A. P.	

C. D.,

Resident of

ORDERED that this notice be served on the abovenamed A. B.

E. F.,
Collector.

FORM 7.
NOTICE UNDER SECTIONS 15 AND 18 OF ACT VIII OF 1885.
(See Rule 24.)

(Where there is more than one landlord and no common agent or manager.)

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A. B., etc., residents of _____ A copy for each joint landlord is herewith submitted. The landlord's fee of Rs. _____, money-order fee of Rs. _____ and Rs. _____ for serving the notice by post in a registered cover and obtaining an acknowledgment are deposited herewith.

*Tenure-holder or raiyat
holding at fixed rates.*

To

A. B., etc., RESIDENTS OF

TAKE notice that I have succeeded to the tenure [or raiyati holding at fixed rates (as the case may be)], specified below, of which you are a joint landlord. The landlord's fee of Rs. _____ will be held in deposit in the Collector's office till applied for by you, and your co-sharers or some other person authorised on your behalf to receive it. The amount stands to your credit and will be paid to you and your co-sharers or transferred to your revenue account on application; or it will be sent by money order to any person to whom you and your co-sharers may jointly desire it to be sent. If the amount is not claimed by you within three years of the date of service of this notice, it will be forfeited to the Government.

Tauzi number of estate.	Name of estate.	Description of tenure or raiyati holding at fixed rates succeeded to, with village and pargana in which situated.	Annual rent of tenure or raiyati holding at fixed rates.	Name, father's name, and residence of late tenure-holder or raiyat holding at fixed rates.	Date, if known, of death of deceased tenure-holder or raiyat holding at fixed rates.	Name, father's name, and residence of successor to tenure or raiyati holding at fixed rates.	Nature of successor's title to succeed.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10
			Rs.					Rs. A. P.	

C. D.,
Resident of

ORDERED that this notice be served on the abovenamed A. B.

E. F.,
Collector.

FORM 8.

NOTIFICATION UNDER SECTION 87 OF ACT VIII OF 1885.

(See Rule 37.)*

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of _____, has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned, and that I am about to re-enter upon it accordingly.

Dated

|
|

Landlord.

Schedule of Property.

Name of village and pargana in which situated.	Area and boundaries of holding.	Rent of holding.
1	2	3

FORM 9.

Requisition to Collector for a verified or certified copy of, or extracts from, the record-of-rights under section 148(b1) of the Bengal Tenancy Act, 1885, as amended by Bengal Act I of 1907.

(See RULE 39.)

Be pleased to furnish to this Court on or before the _____ a certified copy of, or extract from, the record-of-rights relating to the undermentioned tenancy, which is required for reference in suit No. _____ of _____

A. B.
Judge.

Name of village.	Thana.	Thana number.	Tauzi number and, if revenue free, Register number.	Name of landlord at the date of publication of the record-of-rights.	Name of tenant at the date of publication of the record-of-rights.	Number of khewat or khatian or reference to other document forming part of the record-of-rights of which copy or extract is required.	REMARKS.
1	2	3	4	5	6	7	8

The copy required is sent herewith

C. D.,

*Collectorate Record-keeper or
other officer, authorized to certify copies.*

COPY received.

E. F.,

Sarishtadar, Civil Court.

FORM 10.

Notice of Date of Attestation of the Record. [See Rule 50 (a).]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village : Pargana :
Thana : District :
Thana No. or Revenue Survey No. .

Take notice that under the powers vested in me by the Bengal Tenancy Act, 1885 (VIII of 1885), and the rules made thereunder, I shall, on the day of 190 , at , proceed to attest and complete the record-of-rights in the abovementioned village.

You are hereby required to attend before me at the abovementioned time and place, or at any other time and place to which the proceedings may be adjourned, and to produce such evidence, written or oral, as you may have to offer on the subject-matter of the proceedings.

Revenue-officer.

FORM II.

*Notice for draft publication of the record.** [See Rule 62(a),
Chapter VI, of the Rules.]

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats and occupants of—

Village	:	|	Pargana	:
Thana	:	|	District	:
Thana No.			or Revenue Survey No.	

Take notice that as the attestation of the record of the above-mentioned village has been completed, the Draft Record will be published by its contents being read out in the village on the

All persons interested are called on to attend on this date.

Revenue-officer.

FORM 12.

Objection under section 103A of the Bengal Tenancy Act.

[See Rule 62 (b), Chapter VI, of the Rules.]

Village	:	|	Pargana	:
Thana	:	|	District	:

Thana No. or Revenue Survey No.

Name of objector, with father's name, caste and address.

Name, father's name, caste, and address of person in whose khatian the entry objected to has been made, and number of khatian, if known.

Statement of entry objected to, with details of objection.

Statement of relief sought.

Signature of objector, with date of filing.

FORM 13.

Notice fixing the date for the hearing of an objection under Section 103A of the Bengal Tenancy Act (See Rule 63.)

'By order of the Settlement Officer at
District

CASE NO. OF 190 .

IN THE COURT OF

Objector

Notice to

WHEREAS an objection (copy of which is annexed) under section 103A of the Bengal Tenancy Act has been filed, and the date of its disposal has been fixed for the 190 , you are hereby informed that you should, on the day fixed, appear personally or by agent in this Court at at o'clock to produce any evidence you have. In case of your failing to appear at the time fixed, orders will be passed according to law.

Dated

Month

190 .

FORM 14.

Notice for settlement of fair rents in connection with a settlement of the land revenue (See Rule 65)

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village
Thana

Pargana
District

Thana No. or Revenue Survey No. .

Take notice that on at I shall proceed to fix fair and equitable rents for all the tenants of the above-mentioned village. All persons interested or concerned are called upon to attend at the place named above on the date specified.

Revenue-officer.

FORM 15.

Notice for publication of a Table of rates [See Rule 69 (a)].

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village
Thana

. | .

Pargana
District

Thana No. or Revenue Survey No. .

Take notice that a table of rates for the abovementioned village has been prepared, and that it will be published in the village on the day of All persons interested are called upon to attend on the date specified.

Revenue-officer.

FORM 16.

Notice for the publication of a Settlement Rent-Roll [See Rule 75].

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village	:	|	Pargana	:
Thana	:	|	District	:
Thana No.			or Revenue Survey No.	

Take notice that fair rents having been settled for all tenants in the above-mentioned village, a Settlement Rent-Roll has been prepared and that this Rent-Roll will be published by its contents being read out in the village on the . All persons interested are called upon to attend.

Revenue-officer.

FORM 17.

Notice for final publication of the record. (See Rule 79).

NOTICE to the proprietors, tenure-holders, landlords, raiyats, under-raiyats, and occupants of—

Village	:	|	Pargana	:
Thana	:	|	District	:
Thana No.			or Revenue Survey No.	

Take notice that all objections under section 103A of the Tenancy Act [The words in italics are to be omitted in cases in which a settlement of land revenue is not being made.] having been decided by the Revenue-officer and the Settlement Rent-roll having been incorporated in the record-of-rights, the record of the abovementioned village has been finally framed and will be published by its contents being read out in the village on the . All persons interested are called on to attend on this date.

Revenue-officer.

FORM 18.

Notice for service on persons interested in an application made by landlord or tenant for fair rents.

[See Rule 84].

To

WHEREAS (here state name, description and address of applicant or applicants) ^{landlords} _{tenants} have made an application, in which you are interested, for the settlement of a fair rent for lands in village ,

^W
a copy of the publication
an extract containing such parts of the application as concern you is hereby served on
you, and you are hereby summoned to appear in this Court in person
or by duly-authorised agent at o'clock on the
at for final disposal of the application. In default
of your appearance on the day mentioned, the application will be heard
and determined in your absence. You should bring or send by your
agent on the day fixed any document or evidence on which you intend
to rely.

Revenue-officer.

SCHEDULE II.

(Referred to in Rule 4.)

BURDWAN DIVISION.

DISTRICT.	Local areas.		Staple food-crops.		Marts at which prices to be taken.
I	2		3		4
BURDWAN	.. {	Sadar subdivision .. Asansol ditto .. Katwa ditto .. Kalna ditto ..	Rice Do. Do. Do. .. ..	.. .. .. .. .. .. .. ..	Burdwan. Raniganj. Katwa. Kalna.
BIRBHUM	.. {	Sadar subdivision .. Rampur Hat ditto ..	Rice Do. .. ..	.. .. .. ..	Suri. Rampur Hat.
BANKURA	.. {	Sadar subdivision .. Vishnupur ditto ..	Rice Do. .. ..	.. .. .. ..	Bankura. Vishnupur.
MIDNAPORE	.. {	Sadar subdivision .. Ghatal ditto .. Tamluk ditto .. Contai ditto ..	Rice Do. Do. Do. .. ..	.. .. .. .. .. .. .. ..	Midnapur. Ghatal. Tamluk. Contai.
HOOGHLY	.. {	Sadar subdivision .. Serampore ditto .. Arambagh ditto .. Howrah ditto .. Ulubaria ditto ..	Rice Do. Do. Do. Do. .. ..	.. .. .. .. .. .. .. .. .. ..	Hooghly. Bhadreswar. Arambagh. Howrah. Ulubaria.

PRESIDENCY DIVISION.

24-PARGANAS.	.. {	Sadar subdivision .. Barasat and Barrackpur } subdivisions. .. Diamond Harbour sub- division. .. Basirhat subdivision ..	Rice Do. Do. Do. .. ..	.. .. .. .. .. .. .. ..	Chetla Hat { Barasat. Bistopore. Mugra Hat. Baduria.
NADIA	.. {	Sadar subdivision .. Ranaghat ditto .. Meherpur ditto .. Chuadanga ditto .. Kushtia ditto ..	Rice Do. Do. Do. Do. .. ..	.. .. .. .. .. .. .. .. .. ..	Goari. Ranaghat. Kaliabazar. Chuadanga. Bahadurkhal.

PRESIDENCY DIVISION—*concl'd.*

DISTRICT.	Local areas.		Staple food-crops.		Marts at which prices to be taken.
1	2		3		4
MURSHIDABAD	{	Sadar subdivision ..	Rice ..	..	Berhampore.
		Lalbagh ditto ..	Do. ..	..	Lalbagh.
		Kandi ditto ..	Do. ..	..	Kandi.
		Jangipur ditto ..	Do. ..	..	Jangipur.
JESSORE	{	Sadar subdivision ..	Rice ..	..	Jessore.
		Narail ditto ..	Do. ..	..	Narail.
		Magura ditto ..	Do. ..	..	Magura.
		Jhenida ditto ..	Do. ..	..	Jhenida.
		Bongaon ditto ..	Do. ..	..	Bongaon.
KHULNA	{	Sadar subdivision ..	Rice ..	..	Khulna.
		Satkhira ditto ..	Do. ..	..	Satkhira.
		Bagerhat ditto ..	Do. ..	..	Bagerhat.

PATNA DIVISION.

PATNA	{	Sadar subdivision, excluding thana Maner.	{	Makai up-land ..	{	Maroofganj.
				Rice low-land ..		
		Barh subdivision ..	{	Makai up-land ..	{	Barh.
				Rice low-land ..		
GAYA	{	Bihar ditto ..	{	Morni up-land ..	{	Bihar.
				Rice low-land ..		
		Dinapore ditto with thana Maner.	{	Barley up-land ..	{	Dinapur.
				Rice low-land ..		
GAYA	{	Sadar subdivision ..	{	Wheat up-land ..	{	Gaya.
				Rice low-land ..		
		Nawadah ditto ..	{	Wheat up-land ..	{	Nawadah.
				Rice low-land ..		
GAYA	{	Jahanabad ditto ..	{	Wheat up-land ..	{	Jahanabad.
				Rice low-land ..		
		Aurangabad ditto ..	{	Wheat up-land ..	{	Aurangabad.
				Rice low-land ..		
SHAHABAD	{	Sadar subdivision ..	{	Wheat up-land ..	{	Arrah.
				Rice low-land ..		
		Buxar ditto ..	{	Wheat up-land ..	{	Buxar.
				Rice low-land ..		
SHAHABAD	{	Sasaram ditto ..	{	Wheat up-land ..	{	Sasaram.
				Rice low-land ..		
SHAHABAD	{	Bhabhua ditto ..	{	Wheat up-land ..	{	Bhabhua.
				Rice low-land ..		

PATNA DIVISION—(concl'd.)

DISTRICT.	Local areas.	Staple food-crops.	Marks at which prices to be taken.
1	2	3	4
SARAN	Sadar subdivision ..	<i>Makai</i> up-land .. Rice low-land ..	Shahabganj.
	Gopalganj ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Mirganj.
	Siwan ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Siwan.
CHAMPARAN	Sadar subdivision ..	<i>Makai</i> up-land .. Rice low-land ..	Motihari.
	Bettiah ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Bettiah.
MUZAFFARPUR	Sadar subdivision ..	<i>Makai</i> up-land .. Rice low-land ..	Muzaffarpur.
	Sitamari ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Sitamari.
	Hajipur ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Hajipur.
DARBHANGA	Sadar subdivision ..	<i>Murree</i> up-land .. Rice low-land ..	Darbhanga.
	Madhubani ditto ..	<i>Murree</i> up-land .. Rice low-land ..	Madhubani.
	Samaastipur ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Samaastipur.

BHAGALPUR DIVISION.

MONGHYR	Sadar subdivision ..	Wheat up-land .. Rice low-land ..	Monghyr.
	Begusarai ditto ..	Wheat up-land .. Rice low-land ..	Begusarai.
	Jamui ditto ..	Wheat up-land .. Rice low-land ..	Jamui.
BHAGALPUR	Sadar subdivision ..	<i>Makai</i> up-land .. Rice low-land ..	Bhagalpur.
	Banka ditto ..	<i>Makai</i> up-land .. Rice low-land ..	Banka.
	Madhipura ditto ..	<i>Murree</i> up-land .. Rice low-land ..	Madhipura.
	Supaul ditto ..	<i>Murree</i> up-land .. Rice low-land ..	Supaul.

BHAGALPUR DIVISION—*concl'd.*

DISTRICT.	Local areas.	Staple food-crops.	Markets at which prices to be taken.
1	2	3	4
PURNEA	Sadar subdivision ..	Wheat up-land Rice low-land ..	Beamsganj.
	Araria ditto ..	Wheat up-land Rice low-land ..	Araria.
	Kishanganj ditto ..	Wheat up-land Rice low-land ..	Kishanganj.

ORISSA DIVISION.

CUTTACK	Sadar subdivision ..	Rice ..	Cuttack town.
	Jajpur ditto ..	Do. ..	Charchika Hat.
	Kishanganj ditto ..	Do. ..	Jajpur town.
BALASORE	Balasore Sadar subdivision	Rice ..	Balasore.
	Bhadrak ditto	Do. ..	{ Bhadrak. Chandbali.
PURI	Sadar subdivision ..	Rice ..	{ Puri. Banamalipur.
	Khurda ditto ..	Do. ..	Khurda.

APPENDIX IA.

EASTERN BENGAL AND ASSAM GOVERNMENT RULES.

The 24th August, 1909.

No. 2304R.—In exercise of the power conferred upon him by sub-section (2) of section 61, section 134 and section 189 of the Bengal Tenancy Act, 1885 (VIII of 1885), the Lieutenant Governor is pleased to direct that the following revised rules under the said Act, which, subject to the modifications now made therein, were published in accordance with the provisions of sub-sections (1), (2) and (3) of section 190 of the said Act, at pages 553-567 of the *Eastern Bengal and Assam Gazette*, part II, dated the 24th March 1909, shall be substituted for the like rules, which were published with the Notification, dated the 21st December, 1885, at pages 1255-68 of the *Calcutta Gazette*, Part I, dated the 23rd idem, as subsequently added to, modified or altered up to the date of this Notification.

GOVERNMENT RULES UNDER THE BENGAL TENANCY
ACT, 1885 (VIII OF 1885).

[AS MODIFIED BY SUBSEQUENT LEGISLATION.]

CHAPTER I.—GENERAL.

1. In carrying out the following rules, Revenue Officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue Officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII of 1885.

2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue Officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue; and the proceedings and orders of each Revenue Officer under this Act shall be subject to the supervision and control of the Revenue Officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

The Collector and the Commissioner in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations.

3. Where no other mode of service of notice is prescribed by the Bengal Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, if the notice is addressed to one or more persons occupying or owning the same holding or tenure ; and if it is addressed to a number of persons occupying or owning different holdings or tenures in the same village, the notice shall be served in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure, or by proclamation and beat of drum, and by posting it in the presence of not less than two persons, on some conspicuous place in the village, and also by fixing it up in the village office, if any, where the rent is usually paid. In the case of uninhabited villages, the posting of the notice shall be made in the nearest inhabited village.

CHAPTER II.—STAPLE FOOD-CROPS AND PRICE-LISTS.

4. The local areas under sub-section (1) of section 39 shall be those entered in Schedule II annexed to these rules, and the mart specified in the same schedule for each local area shall be that at which prices shall be recorded.

5. Rice has been declared, and until further orders, shall be deemed to be the staple food-crop in all such local areas.

6. Price-lists of the staple food-crops shall be prepared on one market-day in the month at intervals of not less than twenty days. This market-day shall be selected by the Collector, subject to the control of Board of Revenue.

7. The price recorded shall be the prevailing retail price at which staple food-crop was actually sold in the mart to which the price-list refers on the day selected under the last preceding rule.

8. (1) Price-lists shall ordinarily be prepared by a gazetted officer not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector may authorise a kanungo to prepare the lists.

(2) Where prices are recorded at marts, other than those at the headquarters of districts, the Collector may with the sanction of the Commissioner, authorise a Sub-Registrar to prepare the lists on days when no gazetted officer or kanungo is available.

(3) One or two respectable inhabitants of the locality shall always be asked to assist in the preparation of price-lists, and the list shall be signed by at least one of them as well as by the officer preparing it.

9. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(a) the date of his visit to the mart at which prices are to be recorded ;

(b) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

10. When price-lists are prepared at the sadar subdivision by an officer other than a Covenanted Deputy Collector, or at other subdivision by an officer subordinate to the Subdivisional Officer, or by a Sub-Registrar, they shall be submitted to the Covenanted Deputy Collector or to a Deputy Collector specially nominated by the Collector for the purpose, or to the Subdivisional Officer, as the case may be. Such officer shall scrutinize the lists ; he may call for explanation and cause errors to be corrected ; and, having satisfied himself of the accuracy of the lists, he shall countersign them.

11. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the collectorate or subdivisional office, and at every police station and Munsifi in the local area.

12. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector, on such objections.

CHAPTER III.—LANDLORDS' AND TENANTS' IMPROVEMENTS.

13. Applications from landlords for the registration of improvements shall be made to the Collector of the district. If any such application be presented to any other Revenue Officer, he shall forward it for orders to the Collector.

14. As far as practicable, the application shall be in Form I of Schedule I attached to these rules. The Collector shall either verify the application personally or shall depute a Revenue Officer, not below the rank of Sub-Deputy Collector to make the verification. In all cases the verification shall be by local enquiry.

15. Before holding a local enquiry under last rule, the Revenue Officer shall prepare a proclamation giving general notice to the tenants of every village concerned of his proposed local enquiry and of the date thereof. He shall cause such proclamation to be published by beat of drum in every such village and he shall cause a copy of the proclamation, together with a copy of the landlord's application, to be fixed up in the

presence of not less than two persons, in some conspicuous place of every such village. The expenses of such publication shall be borne by the applicant for registration.

16. The Revenue Officer, who makes a local enquiry under rule 14, shall ascertain whether the work in question was carried out, and if so, at what time, at whose expense, and at what cost ; whether the work is an improvement as defined in section 76 (2) of the Act, and was lawfully made by the landlord ; and what tenants have been benefited thereby. The Revenue Officer shall embody in a proceeding the result of his local enquiry. When an officer, other than the Collector, has made the local enquiry, he shall submit the proceeding to the Collector.

17. The Collector, after considering the proceeding of the local enquiry and after holding such further enquiry as he thinks necessary, shall pass an order directing or refusing the registration of the landlord's improvement.

18. Every Revenue Officer who records evidence under section 81 (1) shall exercise all the powers which are exercised by a Civil Court in the trial of suits, and shall be guided by the provisions of rules 5 and 8 of Order XVIII of the Code of Civil Procedure (Act V of 1908).

CHAPTER IV.—RECORD OF PROPRIETORS' PRIVATE LANDS.

19. Applications under section 118 shall be made to the Collector of the district. If any such application be presented to any other Revenue Officer, he shall forward it for orders to the Collector.

20. The application shall be signed by the party making it and shall contain the following particulars so far as the applicant is able to furnish them :—

- (a) the name, tauzi number, and Government revenue of the estate ;
- (b) the name of the registered proprietors and the share held by each ;
- (c) the specification of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known ;
- (d) the names of the tenants (if any) in occupation of each such plot ; and
- (e) the grounds of the application.

21. On receipt of the application the Collector shall make such enquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings. (If the Collector directs that further proceedings be taken, he may transfer the application for disposal to any Revenue Officer subordinate to him.)

22. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, (the Collector) shall order that the lands be measured and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition cases and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit.

* * 23. Rules 40-48 relating to Revenue Officers acting under Chapter X of the Bengal Tenancy Act shall apply *mutatis mutandis* in the case of Revenue Officers acting under Chapter XI of the said Act.

CHAPTER V.—SERVICE OF NOTICES.

24. Notices under sections 12, 13, 15, and 18 shall contain so far as may be possible, the particulars given in the forms contained in Schedule I (Forms 2 to 7).

25. (a) Where there is a sole landlord, or where two or more persons are joint-landlords and have a common agent such as is referred to in section 188, or a common manager appointed under section 95, the notices shall be served on such sole landlord or his agent or on such common agent or manager as the cases may be.

(b) Where there are more than one landlord, and no common agent or manager has been appointed, a notice shall be served on each joint-landlord.

26. In each case under the preceding rule the notice shall be forwarded by post, in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), and an acknowledgment obtained.

27. In the cases mentioned in rule 25 (a) the landlord's fee shall be transmitted by money-order to the sole landlord or his agent or to the common agent or manager, as the case may be, at the time when the notice is issued. The coupon attached to the money-order shall contain, so far as may be possible, the particulars given in the forms contained in Schedule I.

28. If, in cases where the amount of landlord's fee is transmitted by money-order the sole landlord or his agent or the common agent or manager refuses to accept payment thereof, and in all other cases where no application is made for payment of the landlord's fee, the amount shall be kept in deposit in the Collector's office for three years from the date of the service of the notice, and on the expiry of that time the Collector of the district may declare that it has been forfeited and on such declaration being made it shall be at the disposal of Government.

29. The Collector or any other officer who signs the order for the notice to be served shall satisfy himself that the landlord's fee and other fees and charges realised in each have been paid into the treasury.

30. The agreement under sub-section (2) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of summons on defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court. . *

31. The notice under sub-section (4) of section 46 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of the process fee prescribed by the High Court.

32. In cases (a), (b) and (d) of section 61 referred to in sub-section (2) of section 63, the notice of the receipt of the deposits shall be served by forwarding the notice by post in a letter registered under Chapter VI of the Indian Post Office Act, 1898 (VI of 1898), or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure.

33. The general notice referred to in sub-section (2) of section 72 may be published by the transferee by fixing up a written notice to the tenants on the village office or in the presence of not less than two persons in some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may if he thinks fit, apply for service of the notice to the Court having jurisdiction to entertain a suit for arrears of rent of the holding and the Court shall thereupon serve the notice as hereinbefore prescribed on payment of the process fee prescribed by the High Court.

34. Notice under section 73 shall be in writing and shall be delivered to the landlord or his agent or, where two or more persons are joint-landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54. When there are two or more joint-landlords without a common agent or manager, the notice shall be served at the village office of the principal co-sharer or at such other places as may be appointed by each of the landlords for payment of rent under sub-section (2) of section 54.

35. The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure on payment of process fee prescribed by the High Court.

36. If the raiyat elects to proceed under sub-section (2) of section 86, he may personally serve a written notice of his intention to surrender on his landlord ; but if he elects to proceed under sub-section (4) of the said section the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process fee prescribed by the High Court.

37. A notice of the tenant's abandonment of his holding under sub-section (2) of section 87 shall be in the form (Form 8) contained in Schedule I, and shall be submitted in duplicate. One copy shall be published by beat of drum upon the holding alleged to be abandoned, and then kept in the record, and the other copy shall be affixed, in the presence of not less than two witnesses, to some dwelling house, or tree or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1.

38. Notice to the tenant under section 115 shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court.

39. Every requisition from the Civil Court to the Collector for certified copies of, or extracts from, the record-of-rights shall, so far as may be possible, contain the particulars specified in the form (Form 9) in Schedule I. The copy or extract shall be certified to be correct by such officer as may be appointed by the Collector for the purpose.

CHAPTER VI.

*PART I.—POWERS OF OFFICERS MAKING SURVEYS AND PREPARING RECORD-OF-RIGHTS.

40. When a Revenue Officer is appointed for the purpose of making surveys and preparing record-of-rights under Chapter X of the Bengal Tenancy Act within any district, he shall be appointed either with or without the additional designation of "Settlement Officer" or "Assistant Settlement Officer." All such officers are hereby vested with :—

- (a) all the powers exercised by a Civil Court in the matter of procuring the attendance of parties and witnesses and of procuring the production of documents ;

- (b) power to enter upon any land included within the area in respect of which the order under section 101 has been made, and to survey, demarcate, and make a map of the same ;
- (c) power to cut and thrash the crops on any land in respect of which the order under section 101 has been made and to weigh the produce with a view to estimating the capabilities of the soil.

41. A Revenue Officer appointed with the additional designation of Assistant Settlement Officer is also hereby vested with all the powers of an Assistant Superintendent of Survey and of a Deputy Collector under the Bengal Survey Act, 1875.

42. A Revenue Officer appointed with the additional designation of Settlement Officer is hereby vested also with all the powers of Superintendent of Survey under the Bengal Survey Act, 1875.

43. A Revenue Officer appointed with the additional designation of Settlement Officer or Assistant Settlement Officer is hereby vested also with all the powers exercised by a Civil Court in the trial of suits.

44. A Revenue Officer appointed with the additional designation of Settlement Officer may, by general or special order, make over for disposal to any Assistant Settlement Officer subordinate to him—

- (a) objections under section 103 A ;
- (b) the settlement of fair rents, including the preparation of a table of rates ;
- (c) the preparation of a settlement rent-roll under Chapter X, Part II, of the Act ;
- (d) objections under section 104B (3) or section 104E ;
- (e) applications for the settlement of fair rents under section 105 ;
- (f) suits instituted for the trial of disputes under section 106 ;
- (g) applications for the commutation of rents under section 40.

45. A Revenue Officer appointed under the designation of Settlement Officer may also withdraw from the file of any Assistant Settlement Officer subordinate to him, any of the proceedings mentioned in rule 44 and may dispose of them himself or transfer them for disposal to any other Assistant Settlement Officer subordinate to him. He may also transfer to a competent Civil Court for trial any particular case or class of cases under section 106.

46. Where no special Settlement Officer has been appointed for any district, the Collector of that district is hereby appointed to discharge all the functions of a Revenue Officer under Chapter X of the Bengal Tenancy Act, and is vested with all the powers of a Settlement Officer under rules 40 to 45.

47. In respect of all operations under Chapter X of the Bengal Tenancy Act which have been placed by the Board of Revenue under the administrative control of the Director of Land Records, that officer is hereby appointed to discharge all the functions of Revenue Officer under the said chapter and is vested with all the powers of a Settlement Officer under rules 40 to 45. In respect of such operations he is further declared, under section 104B (4), to be the "confirming authority" for tables of rates and settlement rent-rolls which have been prepared by other Revenue Officers, and he is declared, under section 104G (1), to be the Superior Revenue authority to whom appeals will lie from original orders on objections passed by other Revenue Officers under section 104B (3) or section 104E. In the case of tables of rates and settlement rent-rolls prepared by the Director of Land Records, the Board of Revenue will be the confirming authority, and in the case of original orders on objections passed by the Director of Land Records, the Board of Revenue will be the appellate authority.

48. In respect of all operations under Chapter X of the Bengal Tenancy Act, which have been placed by the Board of Revenue under the administrative control of the Commissioner of the Division, the Commissioner will exercise all the powers vested in the Director of Land Records by rule 47. In the case of table of rates and settlement rent-rolls prepared by the Commissioner, the Board of Revenue will be the "confirming authority," and in the case of original orders on objections passed by the Commissioner, the Board of Revenue will be the appellate authority.

PART II.—PROCEDURE.

49. When an order has been made under section 101 (1) or section 101 (2), directing that a survey shall be made and a record-of-rights prepared by a Revenue Officer in respect of the lands of any local area, estate or tenure or part thereof, the survey shall be made and the record-of-rights prepared in the manner described in the following rules and by the following processes, namely :—

- (i) Traverse survey.
- (ii) Cadastral survey.
- (iii) Erection of boundary marks.
- (iv) Preliminary record-writing (or *khanapuri*).
- (v) Local explanation (or *bujharat*).
- (vi) Attestation.
- (vii) Publication of the draft record.
- (viii) Disposal of objections under section 103A.
- (ix) Preparation of the settlement-rent roll, if any.

- (x) Preparation of the final record.
- (xi) Publication of the final record.
- (xii) Distribution of the final record and of printed maps.
- (xiii) Settlement of fair rents under sections 105 and 105A.
- (xiv) Trial of suits under section 106.

A Revenue Officer who has been appointed with the additional designation of Settlement Officer may, at any time before the publication of the final record, direct that any portion of the proceedings in respect of the lands of any local area, estate or tenure or part thereof, shall be cancelled and that the proceeding shall be carried out *de novo* from such stage as he may direct.

50. *Traverse Survey.*—The cadastral survey of the notified area shall be based upon a traverse survey, and such traverse shall ordinarily be carried out by theodolite observations. If possible, the traverse survey shall be connected with one or more points which have been fixed by previous surveys.

51. *Cadastral Survey.*—A large-scale map showing roads, rivers, railways and other physical features of the country as well as homesteads and other fields, shall be prepared for each village as defined in section 3 (10) (a) or section 3 (10) (b) of the Bengal Tenancy Act. When the Settlement Officer is of opinion that the villages of any local area are, as so defined, unsuitable as the unit of survey and record, he shall after ascertaining, as far as possible, the opinions of the landlords and tenants concerned, forward to the Board of Revenue, through the controlling officer to whom he is subordinate, a full report setting out the facts of the case. If the Board of Revenue issue an order under section 115A sanctioning the adoption, within any local area, of a unit of survey and record other than the villages as defined in section 3 (10) (a) or section 3 (10) (b), the Settlement Officer shall adopt the unit so sanctioned; but such unit shall not constitute a village within the meaning of the Act, unless a notification has been issued by the Local Government in accordance with the proviso to section 3 (10).

52. *Erection of Boundary Marks.*—Boundary marks of a permanent nature shall ordinarily be erected at every point where the boundaries of three villages meet, and may also be erected at any other points where this is necessary, in the opinion of the Revenue Officer, for the definition of any boundary.

53. *Preliminary Record-writing.*—At this and the two following stages the draft record shall be prepared. The draft record shall consist of statements of rights which are hereinafter styled the "*khatians*." There shall ordinarily be a separate *khatian* for each person interested,

or each group of persons jointly interested, in the land whether as proprietor, tenure holder, raiyat, under-raiyat or occupant, and each *khatian* shall show the rights and liabilities of each person or group of persons according to the particulars which have been specified in the notification under section 101. At this stage all such particulars shall find entry, with the exception that no entry shall be made as to revenue or rent payable, nor shall the class to which each tenant belongs be recorded. At this stage there shall also be prepared a field index or *ghasra* arranged according to the serial numbers of the fields in the village. This field-index shall not form part of the draft record. Disputes which are found to exist at this stage shall be decided in a summary manner by a Revenue Officer or a Kanungo on the basis of actual possession as far as such basis is applicable.

54. *Local Explanation*.—When areas of the fields have been extracted and entered in the preliminary record, a copy of each *khatian* shall be made over by a Revenue Officer or a Kanungo to the person or persons concerned or their representatives. Each *khatian* shall then be examined on the ground, with reference to the village map, by a Revenue Officer or a Kanungo and shall be explained to the person or persons concerned or their representatives, if present. The Revenue Officer or Kanungo shall make such corrections as are necessary in the map, in the draft record, and in the copies of the *khatians* which have been distributed, if they can be produced for this purpose. Provisional entries of rent shall be made at this stage both in the office copies of the *khatians* and in the copies produced, but entries of status shall be deferred till attestation.

55. *Attestation*.—This stage of the operation shall be taken up after the landlords and tenants have been allowed a sufficient interval to study their copies of the *khatians*. The attestation of each village shall be taken up at a convenient place in or near the village. Before attestation begins a proclamation shall be published in the village, giving due notice to the landlord and tenants and calling on them to appear before the Revenue Officer on date fixed, bringing with them their copies of the *khatians*. As each person appears before him, the Revenue Officer shall examine his *khatian*, read out all the important entries, make corrections where required, and see that the *khatian* is complete in all particulars. He shall decide disputes in a summary manner, and as far as applicable on the basis of actual possession. He shall enter with his own hand the class to which each tenant or group of tenants belongs and the special conditions and incidents, if any, of the tenancy. He shall also with his own hand enter the revenue payable by each proprietor or group of proprietors and the rent payable by each tenant or group of tenants

after ascertaining that such entry is of rent lawfully payable or deliverable or after amending it if he finds it incorrect. The Revenue Officer shall then sign and date the office copy of the *khatian*, and if the copy of the *khatian*, which was given to the person or persons concerned is produced the Revenue Officer shall see that it corresponds with the office copy as attested. When the Revenue Officer has completed the attestation of all the *khatians* of a village, he shall draw up a formal proceeding to this effect.

56. *Publication of the Draft Record.*—The Revenue Officer shall publish the draft record-of-rights by placing it for public inspection free of charge, during a period of not less than one month at such convenient place as he may determine. A Proclamation shall previously be published in each village informing the landlords and tenants of the place at which the draft record of that village will be open to such inspections, the period during which it will be open to public inspection, and the last date on which objections may be filed.

57. *Objections under section 103A.*—Blank forms of objection shall be supplied free of charge and objection shall, as far as practicable, be made on such forms. Along with the original objection the objector shall file a copy or copies for service on all other persons who, in the opinion of the Revenue Officers are materially interested in the case. The Revenue Officers shall issue notices informing the objector and all other persons so interested of the date and place fixed for hearing the objection, and with each notice to a person other than the objector he shall forward a copy of the objection. Objections shall be disposed of in a summary manner and on the basis of actual possession, as far as such basis is applicable. The record shall contain the names of the witnesses examined and an abstract of the reasons for the decisions. Objections shall not be disposed of in the absence of any of the parties materially interested, or their representatives, unless the Revenue Officer be satisfied, for reasons to be recorded in writing, that the notice was duly served on the person concerned.

58. *Preparation of a Settlement Rent-Roll.*—Where land revenue is being or is about to be settled, the Revenue Officer shall prepare a rent-roll for each village :—

- (i) Before preparing the rent-roll the Revenue Officer shall issue a proclamation, informing the landlords and tenants of the time and place at which the preparation of the rent-roll will begin. If any tenant be absent, the Revenue Officer shall make no entry in the rent-roll which would have the effect of altering the rent of that tenant until a special notice has been duly served on that tenant.

- (ii) When the Revenue Officer is preparing the Settlement rent-roll on the basis of a table of rates he shall consult the landlords and tenants of the village regarding their own classification of the lands therein and regarding the relative capability of each class of land according to that classification. When specifying in the table of rates the rate of rent which is fairly and equitably payable in respect of each class of land, the Revenue Officer shall have regard to the statements of the landlords and tenants as to the classification and relative capability of lands, and shall also have regard to the rate of rent which is now being paid in respect of each class of land. Before settling any rent upon the application of the table of rates, the Revenue Officer shall consider the circumstances of the tenant and shall compare the total rent which he is now paying with the rent which he would pay according to the table of rates. He shall also consider whether the land held by the tenant is good or bad land of its class. When determining the final entries to be made in the rent-roll, the Revenue Officer shall read out, or cause to be read out in his presence, the principal entries relating to the holding and rent of each tenant whose rent is to be settled, and shall enter in the rent-roll with his own hand the fair rent settled for each such tenant.
- (iii) The publication of the draft table of rates, if any, and of the draft settlement rent-roll shall be carried out in the manner and for the period prescribed in the case of the publication of the draft record-of-rights.
- (iv) Objections under section 104 B (3) or under section 104 E shall ordinarily be disposed of by the Revenue Officer, in or near the village in which the land is situated. The Revenue Officer shall record his reasons for each order on an objection. Appeals will lie against these orders to the superior Revenue authority mentioned in rule 47 or rule 48.

59. *Preparation of the Final Record.*—When all objections under section 103A have been disposed of, and when the settlement rent-roll, if any, has been prepared, sanctioned and incorporated with the record, and when the draft record has been corrected in accordance with the original and appellate orders on all objections, the Revenue Officer shall proceed to frame the final record. The final record shall be prepared in conformity with the draft record corrected as above, and shall consist of a series of *khutians* prepared on forms which are generally similar to the forms used for the *khutians* of the draft record. The *khassas* shall not form part of the final record. The final record shall be printed or prepared in

manuscript according as the Local Government may, by general or special order, determine.

60. *Publication of the Final Record.*—The Revenue Officer shall publish the final record-of-rights by placing it for public inspection free of charge, during a period of not less than one month at such convenient place as he may determine. A proclamation shall previously be published in each village, informing the landlords and tenants of the place at which the final record of that village will be open to public inspection and the period during which it will be open to such inspection.

61. *Distribution of printed Maps and of copies of the Final Record.*—The maps which have been prepared under rule 51 may be printed under the authority of the Local Government and may be distributed to public officers, to landlords and tenants and to others in such manner as the Local Government may from time to time, by general or special order, direct. Copies of the final record-of-rights, or of portions thereof, shall be printed or prepared in manuscript and shall be distributed to public officers, to landlords and tenants and to others, in such manner as the Local Government may from time to time, by general or special order, direct. The printed maps, and the copies of the record or of portions thereof, which are distributed under this rule to persons other than public officers, shall be distributed free or on payment according as in the case of each local area the Local Government may direct. When payment is required, the sums so received shall ordinarily be adjusted against the expenses incurred on account of survey and settlement, should the accounts of those expenses still be open.

62. *Settlement of Fair Rents under Section 105-105A.*—(i) When the landlord or tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the opposite party as defendant. The proceedings shall be dealt with as suits and, subject to the directions contained in this rule, the Revenue Officer shall adopt, as far as it is applicable, the procedure laid down in the Code of Civil Procedure for the trial of suits.

(ii) When the estate or tenure is managed by the Court of Wards or by a manager appointed by the District Judge under section 95 of the Act and a settlement of revenue is not being, or is not about to be made, the procedure laid down in this rule for recording and settling rents shall be followed, the manager of the estate or the tenure being regarded as the landlord.

(iii) When a landlord or tenant applies for the settlement of a fair rent, notice shall be served on every person interested in the application, together with a copy of the application, or extract

therefrom, or summary thereof, so far as the application concerned such persons.

- (iv) With the consent of the Revenue Officer, any number of tenants occupying land under the same landlord in the same village may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord :

Provided that, if at any time it appears to the Revenue Officer that the question between any two of the parties, of whom one is so joined with others, cannot conveniently be so jointly tried, he may order a separate trial to be held of that question, or he may pass such order, in accordance with the Code of Civil Procedure, for the joint or separate disposal of the application as he may think fit.

- (v) On the date fixed for the settlement of fair rents, or any subsequent date to which the proceedings may be adjourned, the Revenue Officer shall read aloud, or cause to be read aloud in his presence, the name of each tenant whose rent has to be settled, the area of his tenancy, and the existing rent, and shall then proceed to settle a fair rent under the provisions of Section 105.
- (vi) When a landlord or tenant does not attend, after due service of notice has been proved, the procedure may be *ex parte*.
- (vii) Where a landlord or a tenant appears and the fair rent is not settled under sub-section (5) or sub-section (6) of Section 105, that is, by the acceptance by the parties of a rent proposed by the Revenue Officer, or by compromise, the Revenue Officer, shall record evidence in the manner prescribed in clause (f) of section 148 of the Bengal Tenancy Act, 1885, for the trial of rent-suits, and shall settle a fair and equitable rent according to law :

Provided that in important cases the Revenue Officer may, in his discretion, record evidence at length.

- (viii) When a fair rent has been settled under these rules, it shall be entered in the *khutian* as the rent payable in respect of the tenancy from the date prescribed by section 110.
- (ix) It shall not be necessary for a Revenue Officer to draw up a separate decree with regard to the fair rent settled ; but the entry made in his decision or schedule attached thereto with regard to the fair rent settled shall be held to be a decree.

- (x) A proceeding under Section 105A shall be considered as part of the proceeding under Section 105 in which the issue arose, and the record of a proceeding under Section 105A shall be considered as part of the record of the proceeding under section 105. In trying and deciding issues under Section 105A, the Revenue Officer shall record evidence in the manner prescribed in clause (vii) of this rule.

63. *Suits under Section 106*—Proceedings under Section 106 shall be dealt with in all respect as suits between the parties.

Applications under Section 103 for Survey and Record-of-rights.—(i) These applications shall be made to the Collector of the district, and shall specify—

- (a) the status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder ;
 - (b) the particulars specified in Section 102 of the Bengal Tenancy Act, in respect of which the application is made : and
 - (c) the number of tenants occupying the estate or tenure or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application (so far as the applicant is able to give these particulars).
- (ii) If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Bengal Act VII of 1876.
- (iii) If the application is made by a tenure-holder, it shall not be admitted unless the right of the tenure-holder and the extent of his interest is admitted by the superior landlord or is proved to the satisfaction of the Collector.
- (iv) On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary. The Commissioner may call for further information or may require the application to be amended. If he considers that the application cannot be granted with advantage to the interests of all persons concerned, he may reject it. If he approves it, he shall forward the application with an expression of his opinion for the orders of the Board of Revenue. A Commissioner rejecting an application shall record his reason for doing so, and the applicant, if dissatisfied with the order, may appeal within one month to the Board of Revenue.
- (v) When an application is referred to the Board or an appeal is preferred, the Board may call for further information, if necess-

ary, and shall pass such orders as they may think fit for allowing or rejecting the application.

- (vi) As soon as an application is allowed, the Collector shall call upon the applicant to deposit one rupee per acre of the estimated extent of the estate or tenure or part thereof in respect of which the application has been allowed.
- (vii) If the amount deposited as above proves more than sufficient to cover the cost of the proceedings, the unexpended balance will be refunded on their termination. If the amount deposited proves insufficient to cover the cost, the applicant shall, when required by the Collector, deposit from time to time such further sums as the Collector may think necessary for the completion of the proceedings. If he shall fail to do so, the proceedings may be stopped and the order allowing the application cancelled.
- (viii) In conducting operations under section 103 the Revenue Officer shall proceed in accordance with the rules for the guidance of officers acting under section 101.

CHAPTER VII.—GENERAL SCALE OF FEES.

65. *Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court [fees for serving which are regulated by the Court fees Act, 1870 (VII of 1870)], and not being provided for by any other rule made under this Act, a process fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, shall be levied from and paid by the person at whose instance the process is issued before issue of the process. If a peon carries more than one process, involving charges for railway fare, boat-hire, etc., the sum leviable shall be charged in equal shares upon all the processes so carried. The rate at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause (2) of section 20 of Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

If a peon is retained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent shall then and there pay demurrage at the rate of 5 annas a day and obtain a receipt from the peon. Unless this demurrage is paid, the peon shall decline to wait. No demurrage shall be charged if the delay was not due to the person requiring the process or to his agent.

66. *Deposits of rent*.—For deposits of rent under section 61 (2), fees shall be levied according to the following scale :—

	Rs.		Annas.
On any sum not exceeding	5	...	1
On any sum exceeding but not exceeding	5 } 10 }	...	2
On any sum exceeding but not exceeding	10 } 25 }	...	4

On any sum exceeding Rs. 25, four annas for each complete sum of Rs. 25 and four annas for the remainder, provided that if the remainder does not exceed Rs. 10, the charge for it shall be only two annas, provided also that in no case shall the fee exceed the sum of Rs. 5.

67. *Distrain of Crops*.—The following scale of charges is prescribed on account of processes for distraint and sale under section 134 :—

- (a) in respect of the warrant of distraint—8 annas :
- (b) in respect of each man necessary to effect the distraint and also to ensure safe custody where such man is to be left in actual possession—4 annas a day ; and
- (c) in respect of action taken under clause (2), Section 126, for the reaping, storing, or preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

In addition to the charges under clause (a), (b) and (c) above, railway-fare, boat-hire and ferry-charges may be levied, when necessary, as under rule 65.

SCHEDULE I.

Forms Nos. 1 to 8—[*The same as in Bengal* see pp. (657) to (666)].

FORM 9.

REQUISITION TO COLLECTOR FOR A VERIFIED OR CERTIFIED COPY OF, OR EXTRACTS FROM, THE RECORD-OF-RIGHTS UNDER SECTION 148(b-1) OF THE BENGAL TENANCY ACT, 1885, AS AMENDED UP TO DATE.

The rest as in Bengal see p. (666) to (671).

SCHEDULE II.

DACCA DIVISION.

District.	Local areas.	Marts at which prices to be taken.
1	2	3
Dacca ...	Sadar subdivision ...	Posta hat.
	Manikganj subdivision ...	Manikganj Dasora Bazar.
	Narayanganj ..	Madanganj.
	Munshiganj ..	Mirkadin.
	Sadar ..	Nasirabad.
Mymensing ...	Jamalpur ..	Jamalpur.
	Tangail ..	Kagmari.
	Netrokona ..	Netrokona.
	Kishoreganj ..	Kishoreganj.
	Sadar ..	Faridpur.
Faridpur ...	Goalundo ..	Rajbari.
	Madaripur ..	Madaripur.
	Gopalganj ..	Gopalganj.
	Sadar ..	Barisal.
	Pirojpur ..	Pirojpur.
Bakarganj ...	Patuakhali ..	Patuakhali (New Bazar).
	Dakshin Shabajpur subdivision	Bhola.

CHITTAGONG DIVISION.

Chittagong ...	Sadar subdivision ...	Busy Hat.
	Cox's Bazar ..	Cox's Bazar.
	Sadar ..	Rajganj (Comilla).
Tipperra ...	Brahmanbaria ..	Brahmanbaria.
	Chandpur ..	Chandpur.
Noakhali ...	Sadar ..	Kalitara Hat.
	Feni ..	Raja's Hat (Feni).

RAJSHAHI DIVISION.

Rajshahi ...	Sadar subdivision ...	Shaheb Bazar.
	Naugaon ..	Naugaon.
	Nator ..	Nator.
	Sadar ..	Railway Bazar Hat.
Dinajpur ...	Thakurgaon ..	Thakurgaon.
	Balurghat ..	Balurghat.
Jalpaiguri ...	Sadar ..	Din Bazar.
	Alipur ..	Alipur.
	Sadar ..	Rangpur.
Rangpur ...	Nilphamari ..	Nilphamari.
	Kurigram ..	Kurigram.
	Gaibandha ..	Gaibandha.
Bogra ...	Bogra District ..	Kalitara Hat.
Pabna ...	Sadar ..	Pabna.
	Sirajganj ..	Sirajganj.
Malda ...	Malda district ..	Balia Nowabganj.

APPENDIX II.

FORMS to be used in the preparation of the settlement record.

No. I.

Khewat (Part I) of revenue-paying lands, containing the names of the proprietors, and the extent and character of the interests. See Rule 48a, Chapter VI, Tenancy Act Rules. (1)

Village		No. in Collector's Register C.		Pargana		Thana No.		District.			
Serial number.	Name of estate or share of—	Number in revenue-roll and separate account number, if any.	Names and addresses of the proprietors, managers and mortgagees of the estate with the character and extent of each proprietor's manager's or mortgagee's interest.		Area contained in the village belonging to each estate to be shown separately.				REMARKS.		
					Name, parentage, and residence.	Character and extent of interest.	Cultivated.	Not cultivated.		Total.	In bighas, dunes, or kads or mans, each containing square yards.
1	2	3	4	5					6			7	8	9	10	11	12

(1) See also Board's Survey and Settlement Manual, Part II, Chap. 8, Rules 6, 18—24.

No. 2.

*Kherout (Part II) of revenue-free lands, showing lands held exempt from Government revenue in perpetuity.
(Rent-free land should not be entered in this).**

Serial number.	Description and character of revenue-free property, whether jagir, mltamgab, &c.	No. in Collector's Register		C.	Pargana	Thana	Thana No.	District.	
		Name parentage, and residence.	Name, parentage, and residence of the proprietor, Manager, or Mortgagee of the revenue-free land, with the character and extent of the interest of each proprietor, manager or mortgagee.						
									3	4
1	2	3	4	5	Area according to present measurement.		Reference to entries in earlier register relating to the property or any part thereof.	REMARKS.	
				Number in mauzawar register of the Collectorate.	Cultivated.	In acres.			In biglas of square yards Total.
				6	7	8	9	10	11
					Not cultivated.	Total.			

* See Boards' Survey and Settlement Manual, Part II, Chap. 8, rules 6 and 25.

No. 3.

Khewat (part III) of interests of Patnidar, Thikadar, Ijardar, or other tenure-holders. See Rule 48 (b), Chapter VI, Tenancy Act Rules.⁽¹⁾

Village No in Collector's Register C. Pargana Thana
Thana No. District

Serial Number.	Name of tenure-holder.	Name of estate and number in column I of the proprietary khewat.	Name or names of tenure-holders landlord or land-lords.	Extent of tenure-holder's interest.	Area held by tenure-holder in acres (if he has Specific possession).	Area in bighas of square yards.	Rent payable by tenure-holder.	Mode in which rent was fixed.	Period for which the rent has been fixed from—to—	Nature, conditions, and incidents of the tenure.	REMARKS.
	1	2	4	5	6	7	8	9	10	11	12

N.B.—Column 11—In the case of a tenure which has been created by a registered deed, merely the registration number, date of the deed and the name of the office in which registered need be recorded in this column.

(1) See also Board's Survey and Settlement Manual, Part II, Chapter 8, Rules 6 and 26.

FORM NO. 4.

Khasra.

Village No. in Collector's Register C. Pargana Thana Thana No. District Name of Amin

Plot No.	Khata No.	Area in acres.			AREA IN BIGHAS.				Method of irrigation and from what number.	CROPPED AREA.										UNCROPPED LAND.			REMARKS.
		A.	D.		B.	K.	Dh.	Bhadol.		Aghani.		Rabi.		Other cropped area.		Doshali area.		Class.	Area.	A.	D.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17							

KHATIAN SLIP.

Name of village		Name of estate		
Number in Collector's Register C		Tauzi number		
Pargana		Patti		
Thana		Thana number		
Name of proprietor.				
Name of intermediate landlord, if any.				
Serial number of khatian.	2. Name, parentage, caste and residence of tenant.			
Present cash rent.				
12. According to landlord.	13. According to tenant.	14. Ascertained by Revenue Officer.	15. Fair rent settled by Revenue Officer.	16. If rent is progressive, detail.
Rent				
Cess				
Total				
17. Status and length of possession in the case of non-occupancy raiyat.		18. Whether rent fixed by contract, order of Court, or otherwise.		19. Special conditions and incidents, if any.
Landlord's area slip given to Tenant's area slip given to		Date Date		

RA NUMBER FIELDS AND BOUNDARIES.	Description of land.	REMARKS.
Boundaries.		
4	5	6

KHASRA NUMBER OF FIELDS AND BOUNDARIES.		Description of land.	REMARKS.
Number.	Boundaries.		
3	4	5	6

(Reverse).

[illegible]

App. II.

KHATIAN SLIP.

Name of village		Name of estate		
Number in Collector's Register C		Tauzi number		
Pargana		Patti		
Thana		Thana number		
Name of proprietor.				
Name of intermediate landlord, if any.				
Serial number of khatian.	2. Name, parentage, caste and residence of tenant.			
Present cash rent.				
12. According to landlord.	13. According to tenant.	14. Ascertained by Revenue Officer.	15. Fair rent settled by Revenue Officer.	16. If rent progresses details
Rent				
Cess				
Total				
17. Status and length of possession in the case of non-occupancy raiyat.		18. Whether rent fixed by contract, order of Court, or otherwise.		19. Special conditions incidents, if any.
Landlord's area slip given to Tenant's area slip given to			Date Date	

FORM NO. 6.

CONTINUOUS KHATIAN FOR COLLECTORATE COPY.

A.

General heading, one form for each volume, printed on stiff paper and inset as a

Serial No. of khatian.	Name, parentage, caste * and residence, etc., of tenants.	FIELDS.		Description.	AREA.								RENT [ENTER AGAINST EACH NON-CASH-PAY- ING PLOT HOW HELD.]		(1) Status ; if non-occu- pancy, length of posses- sion. (2) Rent how fixed and particulars, if progres- sive. (3) Special conditions and incidents, if any. (Here note the orders passed under sections 105A and 106 and on appeal or revision.)	REMARKS.				
		Khasra number.	Boundries.		In acres.		In bighas of square yards.		As ascertained by the Revenue off- icer— 1. Rent. 2. Cess.	Fair-rent settled if any— 1. Rent. 2. Cess.	(1) Status ; if non-occu- pancy, length of posses- sion. (2) Rent how fixed and particulars, if progres- sive. (3) Special conditions and incidents, if any. (Here note the orders passed under sections 105A and 106 and on appeal or revision.)	REMARKS.								
					Culti- vated.	Not cul- tivated.	Total.	Total.					A.	D.			A.	D.	A.	D.
1		3	4	5	6	7	8	9	10	11	12	13								

APPENDIX III.

HIGH COURT RULES.

Rules under section 100.

1. Every manager, appointed under Chapter IX of the Bengal Tenancy Act, shall in all matters act in accordance with such orders as may, from time to time, be issued by the District Judge.

2. The manager shall pay the Government revenue, rent and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

3. No manager shall have power to sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge. Provided that this rule shall not render valid any lease for a shorter time than three years, if the District Judge directs by a written order that his sanction is to be obtained as regards all leases granted by the manager.

4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense.

5. No manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge.

Rules under Chapter XII.

6. All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-section (2), shall be on oath or affirmation.

7. All such applications and all notices of distraint under section 141 shall be entered in a register to be called the "Distraint Register," which shall be kept in the form annexed. A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint, and a copy of the notice under section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of distrained property.

Form of Distrain Register prescribed by Rule. 7.

SERIAL NO.	OF	SECTION	1	2	3	4	5	6	7	8	9	10	11	AMOUNT REALISED BY SALE.				AMOUNT IF ANY DEPOSITED UNDER SECTION.		REMARKS.
														Arrear.	Costs.	Total.	Arrear.	Costs.		
1	Application under	section 122.																		18
2	Notice under sec-	tion 141.																		

Note. In the column for remarks shall also be entered the date of each remand granted. (Inserted by C. O. No. 6 of 20th Feby. 1895).

8. The officer deputed to make a distraint under section 124, or to take charge of produce distrained under section 141, must in all cases be able to read and write the language of the district.

9. The written demand under section 125, shall be framed in accordance with entries contained in the application or notice referred to in Rule 2.

10. The notification of distraint directed in section 124, Act VIII 1885, shall be published by fixing up in a conspicuous part of the holding or other place, in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

11. The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of the arrear due, and it shall direct any person intending to reap, gather, or store the crop or produce, if unreaped or ungathered or intending to do any other act necessary for its preservation to give due notice of his intention to the person who has been placed in charge.

12. The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce.

13. In the event of it being necessary for the distraining officer, or the officer placed in charge of distrained property, to reap, gather, or store any crop or produce, or to do any other acts for the due preservation of the same, as provided by section 126, the person at whose instance the distraint was made shall advance the funds necessary to this end.

14. The officer holding a sale under section 131 shall record a description of the property offered for sale, the names of all persons bidding for the same, and the amount bid by each ; and, if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where, and the time when, the sale will be held.

15. When the sale is concluded and the sale proceeds are realised, the officer who held the sale shall, after paying the costs of the distraint and sale, as directed in section 131, forthwith pay the balance into Court.

16. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, subsection (1), and if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so.

17. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down.

18. All officers deputed to distrain property under this Chapter shall, if there is a post office in the vicinity, report to the Court by letter immediately the distraint is made, or, if there is no such post office, shall immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name of the person (if any) placed in charge of the crop, and the day fixed for the sale, or if the sale has taken place, the day on which it took place. He shall also, immediately on his return file an account of all money received and disbursed by him, together with the receipts for the same and the record of the biddings at the sale, if a sale has taken place.

19. Every person, distraining produce by virtue of the authority conferred on him under section 141 of Act VIII, 1885, shall give notice of such distraint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce, in a tabular form which shall contain the following particulars :—

- (a) The name and address of the person at whose instance the distraint was made and a description of his interest in the property, whether as proprietor, tenure-holder, or raiyat.
- (b) The name of the defaulter, and of the place in which he resides, or was known to be last residing.
- (c) The amount of the arrear with interest, if any, and the period in respect of which it is claimed.
- (d) The holding in respect of which the arrear is claimed, the boundaries thereof or such other particulars as may suffice for its identification.
- (e) The description and approximate value of the produce distrained and if the same has been reaped or gathered, the place in which it is stored.
- (f) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.
- (g) The date on which the distraint was made.
- (h) If the crop or produce is standing or ungathered, the time at which it is likely to be cut or gathered.

FORM OF DECREE.

ISSUED BY AUTHORITY OF THE HIGH COURT
OF JUDICATURE AT FORT WILLIAM
IN BENGAL.

(Civil.)

Rule No 2 of 1906.

*Rules made with the approval of the Governor-General in Council under
Section 143, Bengal Tenancy Act, VIII of 1885 :-*

1. Notwithstanding section 644, Code of Civil Procedure, in original decrees in suits between landlord and tenant for the recovery of rent, in the place of Form No. 127 (Simple Money Decree) prescribed by the 4th Schedule of the Code of Civil Procedure, the following form of decree shall be used :—

IN THE COURT OF

RENT SUIT NO. OF 19 .

Plaintiff.

VERSUS

Defendant.

Claim for Rupees _____ on account of rent
for the period from _____ to _____ at the yearly rent
of Rs. _____ in respect of land held in Mauza _____, Pargana _____

In the presence of the parties on* it is ordered and
 * Enter here decreed that the sum of Rupees (which
 date of Judg- includes rent calculated at a yearly rental of Rs.
 ment. and interest at 12 per cent., damages at
 per cent.) be paid by to together with
 interest at per cent. until realization and that costs be paid as
 directed at the foot of the Schedule given below.

Costs of the suit.

Plaintiff.		Amount.			Defendant.		Amount.		
		Rs.	A.	P.			Rs.	A.	P.
1. Stamp for plaint ..	.				Stamp for power ...				
2. Stamp for power ...					Stamp for petition ...				
3. Stamp for Exhibits ...					Pleader's fee ...				
4. Pleader's fee on Rs. ...					Subsistence of witnesses				
5. Subsistence for witnesses for attendance ...					Service of process ...				
6. Service of process ..									
TOTAL ...					TOTAL ...				

Cost Rs. payable to
per cent. until realization.

with interest at

Notice to take back documents.

The parties in this case are hereby required to take back, as soon as this decree shall have become final, the documents produced by them which are exhibits in the case. If they fail to take them back, the documents will be destroyed, either when the record is destroyed, or on the expiry of one year from the date of this decree becoming final (Rules 35, 35A and 35B, Chapter III, pages 81 and 82 of the High Court's General Rules and Circular Orders, Civil).

Signature of the Presiding Officer.

2. Notwithstanding the provisions of section 206 of the Code of Civil Procedure, it shall not be necessary for a Court in suits between landlord and tenant for the recovery of rent to draw up a formal decree as required by that section in suits where—

(a) the suit is dismissed for default in the absence of both parties, and

(b) the claim is satisfied before the date of hearing of such suit has arrived.

3. Notwithstanding the provisions of section 579, Civil Procedure Code, it shall not be necessary to include in the decree of the Appellate

Court in suits between landlord and tenant for the recovery of rent, the memorandum of appeal required by that section.

Memo

Copy forwarded to the District Judge of _____ for
information and guidance, and for the guidance of the Courts subordinate
to him.

HIGH COURT.
ENGLISH DEPARTMENT. }
Civil }
The 28th February 1906. }

Registrar.

APPENDIX IV.

REGISTRATION RULES.

RULES FOR THE REGISTRATION OF DOCUMENTS UNDER THE BENGAL TENANCY ACT, VIII OF 1885.*

1. The sections of the Tenancy Act, which refer to the registration of documents, are sections 12, 18, 85, 175 and 176.
Leading provisions.

Section 12 has been amended by Act VIII of 1886, and has reference only to the transfer of a permanent tenure by gift, voluntary sale, or usufructuary mortgage, *i. e.*, where the mortgagor delivers possession and authorises the mortgagee to retain the rents and profits accruing from the property mortgaged [section 58 (*d*) of the Transfer of Property Act, IV of 1882].

Section 18 enacts that a raiyati holding at a fixed rent or fixed rate of rent is subject to the same provisions with respect to its transfer by gift, sale or mortgage as a permanent tenure.

The period allowed by section 175 for the registration of a certain class of documents expired on the 31st October, 1886, and after that date their registration was barred.

Section 176 relates to the notification of incumbrances to the landlord. For definition of the term "incumbrance," see section 161.

2. A document presented for registration under sections 12, 18 and 175, shall be first examined with reference to Registration Rule 41, and next with reference to the particular section of the Tenancy Act under which it is presented. Care should be taken not to carry out the procedure under sections 12 and 18, unless it appears *on the face of the deed itself* that the tenure transferred is a permanent tenure, or that the holding transferred is a holding at a rent, or rate of rent, fixed in perpetuity.
Examination of the deed.

The Lieutenant Governor sanctioned the withdrawal of Rule No. 3, see Notification No. 1881, P., dated the 19th September 1899, *Calcutta Gazette*, Part I, September 20, 1899, page 1233. Rule 3 stood thus :—

3. *Under section 88 of the Tenancy Act, a division of a tenure or holding, or distribution of the rent payable in respect thereof shall not be binding on the landlord, unless it is made with his consent in writing. When, therefore, it*
Fractional shares of tenures and holdings.

* See *Calcutta Gazette*, Part I, March 23, 1898, p. 825.

appears from the documents that only a fractional share of a tenure or holding is being transferred, and the landlord's consent in writing is not produced, the procedure under sections 12 and 18 should not be carried out.

4. When a sub-lease executed by a raiyat purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, *viz.*, "*Not admissible under sub-section 2, section 85 of the Bengal Tenancy Act.*"

The note shall be signed, sealed, and dated by the registering officer. The order of refusal will be entered in Book II.

5. In certifying the admissibility to registration of a document presented for registration under these rules, the registering officer shall quote Registration Rule 41, as well as, the particular section of the Tenancy Act under which it is admitted. Thus : *Admissible under Rule 41, also under section of the Bengal Tenancy Act. Correctly stamped under the Indian Stamp Act, Schedule , No.*

The fees levied shall be noted below the certificate of admissibility in the following manner, *viz.* :—

Fees paid A	..	...	1	0	
Ditto. R	...	...	1	4	
					2 4
Landlord's fee	...	...	2	0	
Process-fee (in court-fee stamps)			0	12	
Peon's charges, &c. ...	...	...	0	8	
					3 4
Total ...			...	5	8

• *Sub-Registrar.*

6. The amount of landlord's fee, peon's charges, &c., shall be entered in the printed receipt for the document granted under section 52 of the Registration Act. In calculating the amount of landlord's fee, pie should be omitted.

7. The document shall be entered in the registration fee-book in order of presentation in the same manner as any other document presented under the Indian Registration Act. The registration fee shall be credited in column 7 with the necessary details, and included in the total of other registration fees for credit to Government. The serial number of the document in the Tenancy Act fee-book shall be noted in the column of remarks of the registration fee-book with letters T. A. for reference.

All documents to be entered in the ordinary Registration Fee-book.

Refusal of registration of sub-leases executed by raiyats creating a term exceeding nine years.

Endorsement of certificate of admissibility.

8. Fees for processes shall be paid in court-fee stamps. These stamps shall be affixed to the *application for issue of processes issued*, certifying that the fees have been paid, and the applications being retained in the offices of the registering officers. The stamps shall be cancelled by the registering officers in the manner prescribed in section 30 of the Court Fees Act, *i.e.*, by punching out the figure-head so as to leave the amount designated on the stamps untouched. The pieces punched out shall be immediately destroyed.

9. Charges on account of peon's railway fare, boat hire or ferry charges shall be levied according to the rule quoted in paragraph 3 of Appendix A, subject to the instructions of the Collector of the District.

10. Landlord's fees, process fees, and charges, on account of peon's railway fare, boat hire, or ferry charges, shall not be shown in the registration fee-book, but shall be shown separately in a fee-book called the Tenancy Act fee-book.

Tenancy Act Fee-book.

Serial number of notice.	Serial number of document in Book I.	Date of presentation.	From whom received.	Nature of document.	Annual rent.	Landlord's fees.	Process fee in court-fee stamps.	Peon's boat hire, railway fare or ferry tolls.	Number of chattri or money order used for remitting the fees to the Collector.	Number and date of letter sending notices to the Collector.	Signature of the registering officer.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13
					Rs. A P	Rs. A	Rs. A.	Rs. A.				

11. Column 1 of the Tenancy Act fee-book should be filled up on the presentation of the document, whether the particular notice is ready or not. The number in that column should be transferred to the notice when it is ready. Columns 3 to 9 should also be filled up immediately on the presentation of the document. Columns 10 and 11 should be filled up on the date on which the notice and landlord's fees are sent to the Collector or the sub-divisional officer, as the case may be. The registering officer should affix his initials to each entry in column 11 of the Tenancy Act fee-book. The serial number of a copy sent under section 176 should be entered in the column of remarks.

Mode of filling up
Tenancy Act fee-
book.

12. Columns 7, 8 and 9 of the Tenancy Act fee-book shall be totalled daily, and the daily totals of all cash receipts—that is, all receipts except process fees paid in court-fee stamps—shall be posted in the cash-book under the heads of landlord's fees and peon's charges, &c.

Daily totals to be posted in cash-book.

Preparation and forwarding of Notices under sections 12 and 18 of the Tenancy Act.

13. In the case of documents relating to the transfer of tenures under section 12, or of raiyati holdings at fixed rates under section 18, notices shall be prepared in accordance with Rule 1, Chapter V of the General Rules under the Tenancy Act, reprinted in Appendix B, as soon as execution has been admitted and the executant identified, and the endorsements referring thereto have been recorded. The form of the notice is shewn in Schedule I of Appendix B.

14.* The scale of fees to be levied for the service of notices is laid down in Appendix A.

15. When two or more persons are joint landlords and have no common Agent or Manager, only one notice should be issued and a single process fee levied.

16. The notice referred to in the preceding rule should be served in the manner directed in Appedix B, Postal charges for sending copies of notices under section 12 of the Bengal Tenancy Act to landlords should be met from, and not added to, the process fee. Postal charges for sending copies of notices to the Collector for transmission to landlords should be debited to the Registration Department, and those that may be incurred for their despatch to landlords from the Collectorate should be met by the Collector.

17. All notices or copies of notices shall be prepared in duplicate and shall, with peon's charges, &c., be forwarded to the Collector of the district or the sub-divisional officer of the sub-division, as the case may be, in which the landlords reside, for service upon them, under a covering letter. The form of the covering letter and of the notice will be found in Appendix B.

The landlord's fees will be forwarded to the Local Treasury Officer or Sub-Treasury Officer, as the case may be, under a covering letter to the following effect :—

To—The ^{Treasury}Sub-Treasury Officer of

Sir,

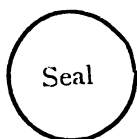
PLEASE receive for deposit Rs. ———, being the amount of landlord's fees deposited by ——— for payment to ———,

the landlord or to some person authorized on his behalf to receive it. The amount should remain at his credit, and should be paid to him, or sent to him, through peon or transferred to his revenue account, on application by him.

I have, &c

Sub-Registrar.

Serial number of notice sent to landlords.	Name of landlords.	Their addresses.
56		
57		
58		
Total...		



18. Where it is necessary to issue more notices than one, only one serial number should be entered in column 1 of the Tenancy Act fee-book. There will thus be one original notice in which the names of all the proprietors concerned will be entered and as many copies of this original notice will be made as are necessary, each copy bearing the serial number of the original notice.

Draft copy to be
filed in the office.

19. One Copy of the original notice shall be filed for reference in the Registration office, a note being made upon it of the number of copies sent.

20. The Lieutenant Governor sanctioned the withdrawal of the Rule 20, Notification No. 1713 P. See *Calcutta Gazette*, Aug. 7, 1901, Part I, p. 1015. Rule 20 was as follows :—

No notice required when landlord is himself the transferee.

20. *When the landlord is himself the transferee, there is no occasion to levy fee or send notice.*

Notices for landlords in Calcutta.

21. Notices for landlords in Calcutta should be sent to the Collector of the 24-Parganas for service.

22. When a transferred tenure or holding is held jointly by several landlords residing in different districts, the notices with peon's charges and the landlord's fees should be sent to the Collector and the Treasury Officer, respectively, of the district in which the tenure or holding is situate.

Case of several landlords residing in different districts.

Notification—No. 593 P.

The 19th February 1900. It is notified for general information that the following rule has, with the approval of the Lieutenant Governor, been substituted for Rule 23 of the Rules for the registration of documents under the Bengal Tenancy Act, VIII of 1885, framed under section 69 of the Indian Registration Act, III of 1877, which were published under Government notification No. 919 P., dated the 21st March 1898, at pages 235 to 330 in Part I of the *Calcutta Gazette* of the 23rd idem :—

“23. Landlord's fees shall be remitted to the treasury with the same regularity as is required in the case of remittance to the treasury of ordinary registration receipts, provided that such fees shall not be forwarded to the treasury until the registration of the deeds on which they are levied has been completed.”

The former Rule stood thus :—

23. *Landlord's fees must be remitted to the Treasury Officer with the same regularity as is required in the case of remittance to the Treasury of ordinary registration receipts.*

24. Two separate chalans shall be prepared, one for the landlord's fees credited in the Tenancy Act fee-book and sent to the Treasury Officer, and the other for the peon's charges, &c., credited in the Tenancy Act fee-book and forwarded to the Collector. For this purpose the details shall be entered on the reverse of the chalans. These shall be as follows :—

A.

Details of landlord's fees deposited.

1	2	3	4
Serial number of chalan.	Amount of landlord's fees deposited.	Name of Depositor.	Name of the landlord to whom payable.
	Rs. A. P.		

B.

Details of peon's charges, &c.

I	2	3	4			
Serial number of challan.	Number of notices.	Name of Depositor.	Name of the person to whom to be served, and details of peon's charges, &c.	AMOUNT.		
				Rs.	A.	P.

25. Any fees realized which may remain in the hands of the registering officer may be refunded if the document is refused registration, a note to that effect being made in the column of remarks in the fee-book. Court-fee stamps may be returned, if they have not been punched. It is not necessary to enter these refunds in the monthly returns.

26. A statement of operations under sections 12 and 18 of the Tenancy Act shall be submitted monthly by Sub-Registrars. A statement for the whole district countersigned by the Collector and the Treasury Officer, shall be submitted by each Registrar to the Inspector-General. The form of the statement will be found in the Appendix. The statement can be easily compiled from the fee-book, if column 5 is carefully filled up.

Notification of Incumbrances to the Landlord under Section 176 of the Tenancy Act.

27. An application under section 176 for the notification of incumbrances to the landlords may be made either verbally or in writing, and when made in writing, it shall bear a court-fee stamp of annas eight. It shall be accompanied by the fee for the copy under Articles G and H of the schedule of fees under the Registration Act, as well as by the amount of process fees. A receipt for the amounts thus taken shall be granted in the form (with necessary alteration) of receipt prescribed under section 52 of the Registration Act.

28. An entry shall at the same time be made in the Registration fee-book, and the fees credited to the Registration Department. The process fee shall be accounted for in the

Tenancy Act fee-book, as directed in Rule 10. The serial number of the copy sent shall be noted in the column of remarks in the Tenancy Act fee-book.

29. The copy of the instrument under section 176 shall be forwarded to the Collector or the Sub-divisional Officer, as the case may be, with a covering letter to the following effect :—

Copy of instrument to be forwarded with covering letter.

No.

Dated.

To—The

SIR,

I HAVE the honor to forward the copy herein enclosed, and to request that it may be served on *A. B.*, resident of———, as required by section 176, Act VIII of 1885. Court-fee stamps for process fee of Rs.——— are affixed to the copy.

I have, &c.,
Sub-Registrar of

A notice in the form prescribed in Rule 17 is not required in transmitting a copy to the Collector or the Sub-divisional Officer under section 176. The stamps received under that section are to be treated in the same manner as directed in Rule 8.

30. A copy of an instrument served in order to notify an incumbrance is equivalent to a notice under section 12, and registration officers are referred to Rule 3, Chapter I of the General Rules under the Tenancy Act, quoted below, for the procedure to be followed in serving such a copy.

Process fees.

31. For every copy made under section 176 of the Bengal Tenancy Act, VIII of 1885, such copying fee, or copying and searching fees shall be charged as may be leviable under Article G, or under Articles G and H of the schedule of fees under the Registration Act for the time being in force. These shall be shown in the ordinary registration fee-book, and not in the Tenancy Act fee-book.

Copying fees.

APPENDICES TO REGISTRATION RULES UNDER THE
TENANCY ACT.

APPENDIX A.

Scale of Fees (Sections 12 and 176 of the Bengal Tenancy Act, VIII of 1885)—See Chapter VII of the General Rules framed by Government under the Tenancy Act.

(1). *For services of notices.*—For the service of every notice under the Bengal Tenancy Act, VIII of 1885, not being a notice issued by any Revenue or Civil Court (fees for serving which are regulated by the Court-fees Act), and not being provided for by any other rule made under this Act, a process fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

(2) Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

(3) In addition to the above fee, the actual charge, which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, will be levied from, and paid by, the person at whose instance the process is issued, before issue of the process. If a peon carries more than one process, involving charges for railway fare, boat-hire, &c., the sum leviable will be charged in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause 2, section 20, Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

APPENDIX B.

Service of Notices under section 12 of the Bengal Tenancy Act, VIII of 1885, see Chapter V of the General Rules.

(1). *Section 12*—Notices under this section shall contain, so far as may be possible, the particulars given in the forms specified in schedule I, and shall be served on the landlord or his agent; or, where two or more persons are joint landlords, on their common agent, referred to in section 188, or on their common manager appointed under section 95, as the case may be, in the manner prescribed for the service of a summons

in the defendant under the Code of Civil Procedure. Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served by being posted on the landlord's village office, if any ; and if there is no village office, by fixing it up in the presence of not less than two persons on some conspicuous place on the tenure, and a copy shall also be forwarded by post in a letter registered under Part III of the Indian Post Office Act, to the person or persons to whom immediately preceding the transfer the rent had ordinarily been paid. The landlord's fee will be held in deposit in the Collector's office until applied for by the landlord or some other person authorised on his behalf to receive it, or to send it to him through peon. The officer who will sign the notices shall initial the entry on account of the landlord's fee in the Deposit Register kept in the Treasury.

SCHEDULE I.

Notice under Section 12 of Act VIII of 1885.

To The ^{Collector}
Sub-divisional Officer

LET this notice be served on *A. B.*, resident of _____, as required by section _____, Act VIII of 1885. Peon's charges, &c., amounting to Rs. _____, is forwarded herewith.

C. D.,

Registering Officer.

To—*A. B.*, resident of _____

TAKE notice that the transfer of the tenure [or raiyati holding at fixed rates (as the case may be)] specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs.

_____ will be held in deposit in Collector's Office till applied for by you or some person authorised on your behalf to receive it. The amount stands at your credit, and will be paid to you, sent to you through peon or transferred to your revenue account on application :—

Tauzi number of state.	Name of state.	Description of tenure transferred with village and pargana in which situated.	Annual rent of tenure.	Name, father's name and residence of transferor of tenure.	Name, father's name and residence of transferee of tenure.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.	REMARKS.
1	2	3	4	5	6	7	8	9	10

C. D.,

Registering Officer.

ORDERED that this notice be served on the above-named landlord.

E. F.,

Collector.

RECEIVED a copy of the above-mentioned notice.

Landlord.

APPENDIX C.

Statement showing the operations under sections 12 and 18, Bengal Tenancy Act, in the

Registry

Office at . . . for the month of 190 .

45

1	2	3	4				5	6	7	8	9	10	11	12	13	14
Name of Office.	Deeds of gift registered.	Deeds of sale registered.	Usufructuary mortgages.				Total number of registration under sections 12 and 18.	Amount of landlords' fees realised during the month.	Amount realised during the month on account of railway fare, boat-hire, or ferry tolls and money-order fee.	Total amount of fees, &c., in hand at the beginning of the month.	Total of columns 6, 7 and 8.	Total amount of fees, &c., remitted during the month to the Collector or Treasury officer.	Total amount of fees, &c., in hand at close of month.	Number of notices* sent during the month to Collector.	Number of notices* pending from previous month.	Number of notices* pending at close of month.
			a	b	c	d										
	Of permanent tenures.	Of permanent tenures.	Of permanent tenures of value above Rs. 100.	Of permanent tenures of value below Rs. 100.	Of riyathi holdings at fixed rates of value above Rs. 100.	Of riyathi holdings at fixed rates of value below Rs. 100.		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.			

*Original notices only should be entered (see Rule 18.)

Countersigned.

Countersigned.

Treasury Officer.

Collector.

Registrar.

APPENDIX V.

*Portions of the Bengal Tenancy Act made applicable to the
Chota Nagpur division except Munblhum, before the
Chota Nagpur Tenancy Act (VI of B. C. of
1908) came into force.*

Portions of the Bengal Tenancy Act, 1885 [as amended by the Bengal Tenancy (Amendment) Act, 1898 and the Bengal Tenancy (Amendment) Act, 1907.]	Restrictions and modifications.
---	---------------------------------

1	2
Ch. I, sec. 3, sub-sec. (1)	<i>For</i> Collector <i>read</i> Deputy Commissioner.
„ „ „ (2)	.....
„ „ „ (15)	.....
„ „ „ (17)	.....
„ X, „ 101, „ (1)	<i>Omit</i> in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned.
„ „ 101. „ (3) & (4)	.....
„ „ 102. ...	<i>In cl. (b) after the word</i> tenuro-holder <i>insert the words</i> Mundari Khunt-kattidar, <i>and omit the words</i> settled raiyat.
„ „ 102A ...	.....
„ „ 103 ...	<i>In sub-sec. (2) omit</i> and (if a settlement of land-revenue is being or is about to be made) <i>the Settlement Rent Roll has been incorporated with the record under sec. 104F, sub-sec. (3).</i>
„ „ 103B ...	<i>In sub-sec. (1) for</i> Collector <i>read</i> Deputy Commissioner.
„ „ 104G „ (2),...	<i>For Part read</i> Chapter. <i>Omit the words</i> but not so as to affect any order passed by a Civil Court under sec. 104H.

- „ „ 108A ... *In the proviso before the words an appeal insert the words a suit or and for sec. 109A read secs. 160 and 161, Chota Nagpur Landlord and Tenant Procedure Act, 1879, and secs. 9A (8) and 9A (10), Chota Nagpur Commutation Act, 1897.*
- Ch. X sec. 109B „ (1) & (3) *In sub.-sec. (1) omit this Act and insert the Chota Nagpur Landlord and Tenant Procedure Act, 1879.*
- „ „ 111 ... *Omit subject to the provisions of sec. 104H, and any application made under sec. 158 or*
- „ „ 111A ... *Omit or, save as provided in sec. 104H, for the alteration of any entry in such a record of a rent settled under secs. 104A to 104F.*
In the proviso, omit framed in pursuance of an order made under sec. 101, sub-sec. (2) cl. (d).
- „ „ 114 ... *Omit in any case except where a settlement of land revenue is being or is about to be made.*
- „ XII, sec. 148 opening words and cl. (b), and cls. (b) (1) and (b) (2). *In cl. (b) for sec. 50 of the Code of Civil Procedure read secs. 46 and 47 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and in the proviso to cl. (b) (1) for Collector read Deputy Commissioner.*
- „ XVII, sec. 189, opening words and sub-secs. (1) and (2) *In sub-sec. (2) after the words under this Act insert the words or under the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and for this or any other Act, read these or any other Act.*
- „ XVII, sec. 190 ... *In sub-sec. (2) omit or High Court, and omit and, in the case of rules made by any other authority in the prescribed manner.*
- „ „ 195 ... *Omit cls. (b), (c), (d) and (e).*

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